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Transportation and Telecommunications Committee
February 14, 2011

[LB52 LB477 LB495]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 14, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB52, LB495, and LB477. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Loudon; and Scott Price. Senators absent: None.

SENATOR FISCHER: Good afternoon. Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer; I am Chair of the committee and I'm from the 43rd District, Valentine. At this time I would like to introduce to you the other members of our committee. On my far right is Senator Scott Price from Bellevue. Next we have the Vice Chair of the Committee, Senator Galen Hadley who is from Kearney. On my immediate right is our committee counsel, Dusty Vaughan. On my immediate left is our committee clerk, Laurie Vollertsen. Next we have Senator Annette Dubas who is from Fullerton. And on my far right is Senator LeRoy Loudon who is from Ellsworth. We do have three committee members who are not present right now: Senator Charlie Janssen from Fremont; Senator Kathy Campbell from Lincoln; and Senator Scott Lautenbaugh from Omaha. Please excuse us when we are coming and going during these hearings. Senators have bills to introduce in other committees. So we aren't trying to get out of this hearing, but we do need to recognize that they will be coming and going for other hearings. Our pages today are Crystal Scholl from Lincoln and Kyle Johnson from Sutton, Nebraska. If you need any help in any way, materials to distribute, please hold them up and the pages will take care of that for you. We will be hearing the bills in the order that they are listed on the agenda. I would ask that those wishing to testify on a bill need to come to the front of the room and be ready to testify as soon as someone finishes testifying, that helps us to keep the committee hearing moving. We have an on-deck table right there. There is a yellow sign-in sheet I would ask that you please sign that yellow sign-in sheet and hand that in before you testify to our committee clerk. We have a computerized transcription program and so it's very important that you follow the directions on that sign-in sheet. For the record at the beginning of your testimony, please state your first and last names and spell them, especially if they can be spelled in several different ways. Please keep your testimony concise and not repeat what someone else has covered. We have a lot of people here today. If you don't want to testify, but you do want to voice your support or your opposition to a bill, you can indicate so at the on-deck table. There are sheets there that you can complete. If you want to be listed on the committee statement however, you do need to fill out the yellow sheet; you do need to come forward; sit in the testifier chair, state your name and your support or opposition to the bill. If you have written comments, you can hand those in and those will be read into the official record. At this time I would ask that you please turn off your cell phones. This is a committee where we do not allow cell phones on and that means no texting. With that I will open

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the hearing on LB52 and welcome Senator Krist. Nice to see you.

SENATOR KRIST: Happy Valentine's Day. [LB52]

SENATOR FISCHER: Happy Valentine's Day from the heart of the Sandhills. [LB52]

SENATOR KRIST: Good afternoon, Madam Chair and members of the Transportation and Telecommunications Committee. For the record my name is Bob Krist, that's B-o-b K-r-i-s-t and I represent the 10th Legislative District in northwest Omaha. I appear before you today in introduction and support of LB52, a bill I introduced at the request of the American Bikers Aiming Towards Education, or ABATE. LB52 would repeal the mandatory motorcycle helmet requirement for riders at least 21 years of age. A motorcycle rider younger than 21 years of age would also be exempt if he or she completed a motorcycle safety course and carries proof of completion. The bill also would make enforcement of the helmet law a secondary action and require motorcycle riders to wear eye protection at all times regardless. Throughout today's hearing I know you will hear compelling arguments on both sides of this issue; and after all that's why we've been elected, that's why we listen, we're here to serve. Rather than stealing the thunder of those who will represent various statistics, facts regarding the bill both positively and negatively, I want the record to reflect my personal rational and conviction for introducing LB52. Make no mistake, for me this is about the 14th Amendment and guaranteeing motorcycle riders the personal freedom to make their own decisions regarding the use of helmets. The 14th Amendment in the United States Constitution states in part: "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection, the equal protection, of the laws." Members of this committee, this is not a helmet issue; this is a helmet law issue. Singling out citizens who choose to ride motorcycles and imposing mandatory helmet laws, I believe, is discriminatory, unconstitutional in that by mandating helmets for motorcycles, as opposed to all motorists, they violate the equal protection guarantee of the 14th Amendment. Also to be clear, I do believe people riding a motorcycle should wear a helmet, but I don't believe that this is something our state should mandate for those over 21 or those who have successfully completed a motorcycle safety course and are licensed to ride in the state. I don't want to be flippant, I want to be very serious, but I said on the floor last year and I will say it again, life's tough, it's tougher if you're stupid. You should protect yourself; you should wear the things that protect you in any recreational activity, but we don't need to tell them what to do. They have the right to choose once they have weighed the risk. I don't always agree with all that is said in this country or the personal choices that are made by its citizens, but I listen and I hear and I try to understand all the perspectives because the freedoms we enjoy to choose are the cornerstones of our nation. I dedicated 21 years of my life defending my country against all enemies, foreign and domestic. This was the oath I took on the day of my

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commissioning and many times after. Today I stand again and defend my personal liberties guaranteed in the constitution. I appreciate this committee's indulgence once again in hearing both sides of the debate and I want to thank those who are taking the time to appear today at this hearing in support of LB52. The support I have received for this bill following its introduction in early January has been overwhelming and very gratifying. Especially gratifying is the realization that so many citizens in this state get it. The "it" I refer to is the sobering fact that the government should never be allowed to take away the personal freedoms guaranteed by our constitution. And if we, we the people, allow those freedoms to be limited or denied there might be no end to the erosion. I want to thank you for the time and for hearing the issue again this year and I stand by for questions. [LB52]

SENATOR FISCHER: Thank you, Senator Krist. At this time I would like to note for the record that we have been joined by Senator Janssen and Senator Lautenbaugh. Are there questions for Senator Krist? I see none. Thank you very much. [LB52]

SENATOR KRIST: Thank you, ma'am. [LB52]

SENATOR FISCHER: At this time I would ask for the first proponent to come forward, please. We will be using the light system. You have three minutes to present your testimony. When you see the yellow light come on, please try to wrap it up. And of course the committee always reserves the right to ask you questions then when you're done. So good afternoon and welcome. [LB52]

TODD MILLER: (Exhibit 11, ABATE) Thank you. Good afternoon, Senators, my name is Todd Miller, T-o-d-d M-i-l-l-e-r. I'm glad to be able to speak to you today in support of LB52 as a citizen of Nebraska, a concerned motorcyclist, and chair of American Bikers Aiming Towards Education. In effort to conserve as much of the committee's time as possible, we present you with this compilation of members' thoughts across the state that hundreds wouldn't come to testify. First I would like to note that LB52 does not prohibit anyone from wearing a helmet or riding a motorcycle, it just merely gives us the right to choose. When our nation was founded upon the principle of liberty and justice for all I would like to begin with these issues. Liberty is freedom--freedom to speak, freedom to assemble, freedom to make choices. Over 20 years ago I lost the freedom to choose how to best protect myself when I ride. For over 20 years I've wondered why this right was taken from me while others still enjoy freedoms to do other activities that are more dangerous. I believe many people look at someone who is not wearing a helmet while riding as someone who is deliberately putting themselves at risk or the population. I even heard it said that those who wish to ride without a helmet lack the intelligence to make proper decisions. Personally I'm offended by these remarks. I have to ask you and ask myself, is it the responsibility of government to protect their citizens from themselves? Is it really even possible? I think not. Moreover, if an attempt by government is made to do so, where will it stop? Helmets on pedestrians while crossing

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streets? Justice--why is it that motorcyclists are singled out for protection? There are many other activities that cause far greater number of deaths and injuries than those few who choose to ride without a helmet. According to the National Safety Council there are more people dying from heart disease, cancer, in cars than in motorcycles. Motorcycle accident numbers reported also include those wearing a helmet which is even further than the number killed while not wearing one. Why is it people eat the wrong foods, drink, smoke, are not restricted from enjoying those activities which they choose to do? I think it's because it is an unpopular legislation. When the Legislature passed the initial seat belt law making it a primary offense it was rejected by the vote of the citizens twice. The new texting law has also been written as a secondary offense. I would note that not wearing a helmet is currently a primary offense which will cause one to be pulled over and ticketed. This appears to me that I have been singled out for some reason, I don't understand why my freedom to choose is any less than others. Public burden--I have no doubt that you'll hear from others that allowing motorcyclists to decide how to best protect themselves will add a tremendous financial burden to the state. To my knowledge there is no actual data that will support this. I have included data that shows healthcare spending per state per capita. You will note that all states bordering Nebraska without helmet laws are spending less than us. A further note, the only state around us that spends more is Missouri and they also have a helmet law. I have recently seen ads from states such as South Dakota and West Virginia are advertising directly to motorcyclists to come to their states. Motorcyclists have come to be viewed as valuable tourist dollars by others. In these economic hard times shouldn't we consider passing favorable legislation to welcome those from states without helmet laws into our state to explore our scenic highways and our small towns. Taking just the Sturgis Motorcycle Rally into account which attracts over 400,000 riders each year, if we could just capture 10 percent with a guest of \$100 a day, we would easily amass \$4 million for one event. And we do much more than ride to Sturgis. I'm assuming I'm being close. So I guess I'll wait for questions. [LB52]

SENATOR FISCHER: Thank you, Mr. Miller. Are there questions? Senator Lautenbaugh. [LB52]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Thank you for coming today, sir. Now you're not advocating that people ride without helmets are you? [LB52]

TODD MILLER: I advocate that we all as citizens have the right as adults choose to wear a helmet or not. [LB52]

SENATOR LAUTENBAUGH: But you're not sitting here saying necessarily that it is a good idea either way. [LB52]

TODD MILLER: No, no, I'm not saying one way or the other. Our organization does not say one way or the other. We promote safe riding across the state. We have safe riding

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programs that is called Share the Road and many others that we are working on currently that promote the idea that all people, all drivers in the state of Nebraska need to be aware of each other and learn to work together to stop accidents, that helping out with safer crashing is not the issue. The helmet will not save lives compared to teaching people to ride better or drive better all the way across the board. [LB52]

SENATOR LAUTENBAUGH: Do you worry that laws like this that are kind of hectoring and take care of us in spite of ourselves might have a deadening effect on something inside of us that once made us a different type of people? [LB52]

TODD MILLER: I believe you're right. Americans are Americans because we are a diverse group of people and by forcing us to mandate into something without being able to have choices in our lives does take something away from being an American citizen and a citizen of the state. [LB52]

SENATOR LAUTENBAUGH: Do you feel like you were born a couple of decades too late? [LB52]

TODD MILLER: Aren't we all. [LB52]

SENATOR LAUTENBAUGH: I was just smoking a cigar outside over lunch, yes, I feel the same way. (Laughter) [LB52]

TODD MILLER: But I also agree that...30 of the 55 states do not follow this mandate, so. [LB52]

SENATOR LAUTENBAUGH: Thank you. [LB52]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Other questions? Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thanks again for coming. Did you ride your motorcycle here today? [LB52]

TODD MILLER: Yes, I did. [LB52]

SENATOR JANSSEN: You did? [LB52]

TODD MILLER: Yes, I did. [LB52]

SENATOR JANSSEN: Wow, that kind of ruins my question. (Laughter) Had you driven your car today would you have worn a seat belt? [LB52]

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TODD MILLER: Boy, I'm not sure I should incriminate myself, but probably not, no. [LB52]

SENATOR JANSSEN: You wouldn't? You're breaking the law. [LB52]

TODD MILLER: Yes. [LB52]

SENATOR JANSSEN: Did you ride your motorcycle with or without the helmet? [LB52]

TODD MILLER: I rode it with a DOT-approved helmet. [LB52]

SENATOR JANSSEN: Because it is a primary offense? [LB52]

TODD MILLER: This is correct. [LB52]

SENATOR JANSSEN: And the seat belt law is not. [LB52]

TODD MILLER: This is correct. [LB52]

SENATOR JANSSEN: Hmm. It's interesting. Again, you're ruining my question. (Laughter) I'm going to have to try for something different. The point being is, you shouldn't have to be told by government. I always say I don't have to wear my seat belt, but I'm afraid, personally I'm afraid to drive without one. I don't think it's the government's place to tell me that I should wear one, but I do and I feel the same about the helmet. And I think you feel the same way about the helmet that I do, is that correct? [LB52]

TODD MILLER: Yes. [LB52]

SENATOR JANSSEN: That you're not necessarily saying to... [LB52]

TODD MILLER: I absolutely...I represent ABATE of Nebraska and like you say, as an organization, we have many of our members that would choose to wear a helmet. Some will not. And most would choose to wear them at times when they feel it was more appropriate. There are issues or times when a helmet would possibly have a chance of saving your life. And one of those is at slower speeds. It would...it's been proven that a helmet over about 15 miles per hour has little effect and becomes a deterrent after...at the higher rates of speed on the interstate. Therefore, I believe it's the individual's right to decide where and when that wearing protective gear would be the best suited for its purpose. [LB52]

SENATOR JANSSEN: Thank you. [LB52]

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SENATOR FISCHER: Thank you, Senator Janssen. Senator Hadley. [LB52]

SENATOR HADLEY: Thank you, Senator Fischer. You know this is...first of all, let me thank ABATE, they've been very professional in this and we had...my first...two years ago and I appreciate that. You know, we have a continuum from no government involvement in anything to complete government involvement in everything you do in your life. And I think we're trying to find some place in there that we can live with. And I wonder...just a couple questions. If you fly on a plane should we have to fasten our seat belt? [LB52]

TODD MILLER: Is it required? [LB52]

SENATOR HADLEY: Yes. [LB52]

TODD MILLER: I think it's only required on takeoff and landing, sir. [LB52]

SENATOR HADLEY: Okay, well, take off and landing,... [LB52]

TODD MILLER: I'm just saying. [LB52]

SENATOR HADLEY: ...should...I mean should the government be...should the government have the ability to require us to wear a seat belt on take off and landing on a commercial plane? [LB52]

TODD MILLER: Do you really believe that a crashed plane with a seat belt would save your life? I'm just being honest. [LB52]

SENATOR HADLEY: I don't know. I don't know. [LB52]

TODD MILLER: I just don't believe that it would. I believe in... [LB52]

SENATOR HADLEY: So you basically would be saying that we shouldn't have that...that shouldn't be a rule either. [LB52]

TODD MILLER: I don't believe that the government should be telling me because I don't think it would save my life and therefore. [LB52]

SENATOR HADLEY: Another question, we have a mandatory child protection in an approved car seat type of thing up to age three, where would you stand on that? We have a law that says you have to do that. [LB52]

TODD MILLER: Well I agree that...it's more common sense. I'm not sure that the law is required. It's common sense, most people that would... [LB52]

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SENATOR HADLEY: So you would say that it would be all right if we dropped the law and parents weren't required to have any kind of car seat, that they could put a baby in the backseat and go roaring down the... [LB52]

TODD MILLER: Well I'm not saying that they would be...I think there are laws that already exist as far as child endangerment whether we have a law that says that putting them in a car seat is required or just the blanket statement that child endangerment is wrong and we know that and we know as a society what is... [LB52]

SENATOR HADLEY: Okay. So you would come down basically on the idea that government should be almost phased completely out of our lives in making rules and regulations. [LB52]

TODD MILLER: I think that government has been stepping into our lives far too much, yes. We do need some sets of laws, some broader organization owe it to keep society, but we as citizens should be able to have choices. We elect our legislation to help make our decisions and laws for us and that's what we've been working on. [LB52]

SENATOR HADLEY: Okay. One last question. If a motorcyclist is injured and does not have health insurance, should the state pick up the tab for the health insurance? Because I...you know, it's been anecdotal, but there have been stories about Medicaid payments into the hundreds of thousands of dollars, should the state...if we follow it through, should the state say no? [LB52]

TODD MILLER: I don't think it's any different than a car...and I'm just going to answer, I don't believe it's any different than someone that drives a car that doesn't have insurance, which does happen whether we have a law or not, that does get injured, gets into a serious accident whether it's their fault or not, the state still picks up that dime as well. I think it's part of the benefit that we have as Nebraskans in this state. It's unfortunate that it would happen, I don't think it's right, but at the same time it is something that we provide our citizens. [LB52]

SENATOR HADLEY: Thank you. [LB52]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Lautenbaugh. [LB52]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. And just by way of clarification, you can see how maybe a seat belt on a plane might protect those around you in the event of crash. [LB52]

TODD MILLER: I would most likely...I haven't seen very few crashes in a plane where

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there were that many survivors of any sort so that...I suppose it would depend on the...where it happens, which is, I believe, most of the time is take off and landing, which is the few times that they do require that...I don't know if it's law, but I've seen the light sign up and we all assume that that would be the best thing so that you wouldn't hurt the person next to you. So I could see that, because that does create a problem. You could possibly hurt the person next to you. However, on a motorcycle I don't think I'm going to hurt you in your car if I do get in an accident. [LB52]

SENATOR LAUTENBAUGH: And you're not wearing an helmet, you're still not going to hurt the other person. [LB52]

TODD MILLER: The odds are pretty minimal. [LB52]

SENATOR LAUTENBAUGH: And I believe we do have immunity for any infractions we admit when you're testifying in front of a committee. [LB52]

TODD MILLER: Thank you. [LB52]

SENATOR LAUTENBAUGH: I might be wrong on that though. (Laughter) [LB52]

SENATOR FISCHER: Senator Lautenbaugh is an attorney so I don't know what we can think on that one. Any other questions? I see none. Thank you very much for coming in today. [LB52]

TODD MILLER: Thank you. [LB52]

SENATOR FISCHER: Next proponent, please. Do we have other proponents? Could I have a show of hands of other proponents that want to speak to this today. I see one more hand. Okay. If you'd like to come to the front of the room now, that would be good. Good afternoon and welcome. [LB52]

BRUCE MEYER: Thank you. My name is Bruce Meyer, B-r-u-c-e M-e-y-e-r. I live in Stanton, Nebraska. I'm the district 4 coordinator of ABATE. I wanted to make sure I was here today because my position as the chairman is an elected position. Our members...I'm elected to be their spokesperson. My ABATE district goes from Long Pine to Pilger and down past Columbus. I have six legislative districts in my ABATE district; two or three of which are wholly encompassed in my district. So I think I have a pretty good point of view as far as what your constituents and I guess mine also as being elected really want. And overwhelmingly people tell me that this is what they want. They want the choice to whether or not they wear a helmet or not. We have several members who...we're not antihelmet; we're not saying that we're outlawing helmets. And we have lots of members who wear their helmets and who think it's a good idea and they are members of our organization because of the work with safety

and, you know, we're not just antihelmet group. But people what their freedom to choose. And I just think that...I suppose people join our organization that are like-minded and think like we do, but as a motorcycle rights and safety organization we have a pretty good grasp on the numbers and on what people want in this state. And overwhelmingly people come to me and they ask me--are we going to get something done this year? Is this the year we're going to get it done? Is this the year, you know? And people are disappointed; people are disappointed in the way that, not so much our organization but just they can't believe that the people they vote for won't come across on their items of personal freedom. I have members that are completely for helmets, they want to wear them and that's fine. But they're still members of our organization. We're not the antihelmet organization that people make us out to be. We have lots of members that wear their helmets. And it's about safety and about personal freedom. I ride several thousand miles every year and I wish I didn't have to wear it. As far as...you know, people ask...somebody asked me last week, as far as, wasn't there some money that we were supposed to get by enacting a helmet law 20 years ago, or whatever it was? Well, they really look at me kind of funny when I tell them that, yeah, there was some money there, but Nebraska never got any because we never filed the paperwork in time to get, you know, any money for that. Nebraska has never gotten any money from any federal source for having a helmet law. So the reason that we put this thing into play so many years ago really is, you know, kind of void now. Now it's all about what the people want, I think. And that's their freedom and their rights back. Thank you. [LB52]

SENATOR FISCHER: Thank you, Mr. Meyer. Are there questions? Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thank you for coming here today and I know you probably had to take off from work to come here. [LB52]

BRUCE MEYER: Yeah, last year. [LB52]

SENATOR JANSSEN: And we don't do these at the most convenient times of day for the working people. And I'm very familiar with where you're from. I don't live there anymore in that area, do you think that would help in...it was indicated earlier, tourism dollars or just...when people think tourism, sometimes I think they're a little bit off kilter because it's not always about the long vacation, but it is the day trips from other states and whatnot. [LB52]

BRUCE MEYER: Yeah, well there's never any shortage of anything going on any particular weekend if you ride a motorcycle in this state or surrounding states. But a lot of people who aren't from this state, the very first thing they check off their list of places not to go is somewhere they have to wear a helmet. Many of my friends that ride from other states don't own a helmet, so coming to Nebraska is null and void. They're not

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going to go buy a helmet just so they can come to something that's going on in our state because there's plenty of other things going on. There's the tourism numbers are probably pretty hard to come up with anything accurate. But I think everybody would have to agree that it's not helping our tourism by having a helmet law. And it's definitely, you know, I think another big concern of yours this year is balancing a budget and I would think any tourism dollars whatsoever that would come in would be a good thing. I mean, we're not making anything except for helmet tickets with the law that we have now. [LB52]

SENATOR JANSSEN: All right, thank you very much. [LB52]

BRUCE MEYER: Thank you. [LB52]

SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB52]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Do you ever hear of anybody who lives in the eastern part of the state choosing to go on their day trips over to Iowa instead of Nebraska because of this? [LB52]

BRUCE MEYER: Oh yeah, all the time. Yeah, you can't...just sit there and watch the bridges and it's, you know, motorcycles going across the bridge and helmets coming off. I travel to South Dakota myself quite a bit for day trips just because it's not that far before I get to take my helmet off. People from other states, you know, yeah, we would really like to come to your state, but, you know, don't want to wear that helmet. And it's kind of hard to get to Sturgis from anywhere not crossing Nebraska from a good half of the country and people ride across...extra hundreds of miles so they don't have to buy a helmet to come through our state. I think the tourism dollars and the money that we're losing, you know, I wouldn't have any idea that would be, but I know it's something. And I know we're not helping ourselves by having one. [LB52]

SENATOR LAUTENBAUGH: Thank you. [LB52]

SENATOR FISCHER: Other questions? Mr. Meyer, can you tell me how many members are in ABATE? [LB52]

BRUCE MEYER: I wouldn't know exactly. It's around a thousand or so, give or take. I'm not sure exactly what the last figures were. But everybody that I've talked to is for getting rid of the helmet law. [LB52]

SENATOR FISCHER: Okay. Appreciate that. And I too appreciate that you took off work to come here today. I know that Senator Janssen said our hearings aren't always conducive for average citizens to come in, so it's nice to see you. Thank you. [LB52]

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BRUCE MEYER: I was here last year and I'll be here again next year if I have to be. I can always work Saturday. [LB52]

SENATOR FISCHER: And we hear from you, believe me. [LB52]

BRUCE MEYER: All right, thank you. [LB52]

SENATOR FISCHER: It's nice to see you. Thank you very much. Next proponent, please. Good afternoon. [LB52]

KEVIN SIGNOR: Good afternoon. Hi, my name is Kevin Signor, K-e-v-i-n, Signor, S-i-g-n-o-r. I am from Norfolk, Nebraska. Myself and my wife, we own a place called Off Road Ranch. I'm not here to talk about the rights, I'm here to talk about how it impacts me and my community economically. We started off as a poker run. Friends of ours lost their baby to SIDS and so we decided as bikers we would raise some money. And it has since developed into more of a weekend thing; bands, the poker run, just a lot of different fun stuff. And I go to different events in South Dakota, Iowa, whether we're riding or whatnot and I try to promote it of course. And we tell them who the bands are we're having this year and they're like great, man, we want to really come, where are you at? Well we're in Norfolk, Nebraska. Well, we live in Iowa; we live in South Dakota; 70 miles to Iowa, 60 to South Dakota. And they aren't going to come. And so it affects not only my family, it affects the Norfolk area. There's a lot of people with...that are not coming that are going to spend money at the hotels and I know we've discussed some of it with Bruce just a little bit ago, but I know first hand, I've talked to these people. They're not coming. So that's why I'm here, just want to express that and I'm open to any questions. [LB52]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you for coming in today, appreciate it. [LB52]

KEVIN SIGNOR: Okay. Thank you. [LB52]

SENATOR FISCHER: Any other proponents, please. Good afternoon. [LB52]

ROBERT AILOR: Good afternoon, Senators. My name is Robert Ailor, R-o-b-e-r-t A-i-l-o-r. I'd like to touch briefly on a couple of topics that have always been brought up when this bill has been presented in previous years and that's the public burden and that's safety issues. Currently 30 of the 50 states, 60 percent of our country does not require helmets for all riders. They do...some states do require them for those under 21. It varies a great deal. But 60 percent of our nation does not feel that this is such an issue in the way of cost to them that they are enacting helmet laws. The other thing I want to talk about a little bit is about safety. I won't argue that a helmet can be a good deterrent to head injuries at times. The fact is though that more riders are killed while

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wearing a helmet than not. Nationally in 2008, 59 percent of those killed in motorcycle accidents were wearing a helmet. It can also cause serious injuries to riders' spinal cords. An injury to a spinal cord can lead to costly, long-term injuries, just as a head injury can. Included in the packet that was handed out with the ABATE information is a study by Doctor Jonathan Goldstein that talks about the effects of helmets on head injuries and on neck injuries. Trading one serious injury for another makes no sense financially or ethically. The fact is that you entertain certain risk when you ride, just as you take with many other activities. I cannot perceive if someone will pull out in front of me on my motorcycle while they're talking on their cell phone. And that has happened. It happened last year to me, but thankfully I was on a two-lane road and I was able to get into the other lane. I can't tell when I wake up in the morning if I'll be run over by a truck or a bus on the way to work. None of us know if we will encounter a seriously impaired driver at times on the road. These are risks we all face every day. But motorcyclists are required to protect themselves in a way that others are not by wearing head protection. Last year nationally we saw 15.6 percent decrease in motorcycle fatalities. This was not due to an increase in states requiring helmet usage. While this is said to be in part to the less miles traveled, the data that I have from the Federal Highway Administration shows that vehicle miles traveled, for all vehicles, went up in 2009. The truth is, no one can give a concrete reason why accidents went down; why fatalities went down. I think it has more to do with driver awareness and rider education programs aimed at reducing accidents rather than things that promote safer crashing. I've included a copy of the 2009 Fatality Report in the ABATE information. You'll note that states without mandatory helmet laws saw reductions as great or greater as the those that have them. I feel that the one thing that we can surmise from the reduction in the 2009 fatalities is that helmets aren't the magic bullet to cure fatalities with motorcycle riders. I know our opponents of this bill will bring forth many statistics to defend their position to keep our rights from us. We could put forth further statistics in the same manner for supporting our side of the argument. We simply want to regain some of our individual freedoms. I'm not paid to be here, nor are any of the folks that are here speaking in favor of this bill. We're representing what many Americans demonstrated this last election. We want our individual rights back and we will fight for them one at a time. I'd like to thank you for giving me the opportunity to address you. I feel fortunate to live in a country where a citizen can voice their opinions. In closing, I would again note that LB52 does not prohibit helmet use, and I ask that you consider allowing this bill to be heard by the full Legislature. Even if you oppose the bill, please give the rest of the Unicameral the opportunity to take action on it. Thank you very much for hearing me. [LB52]

SENATOR FISCHER: Thank you very much, Mr. Ailor. And I can tell you that it is our pleasure and our privilege to have regular citizens come before this committee. It doesn't happen often. Thank you. Any questions? Senator Hadley. [LB52]

SENATOR HADLEY: Senator Fischer, thank you. And I echo what Senator Fischer said, we appreciate, we talk about the citizens being the second house of our

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Unicameral and Legislature. We appreciate it very much. I have a quick question and maybe you will not be...can't answer it, you said 59 percent killed with a helmet, are there any statistics of nationwide how many people wear a helmet whether they're in states with or without... [LB52]

ROBERT AILOR: I have seen that data before, but I do not have it with me today. If you would like to have that, I can research that and get that to your office. [LB52]

SENATOR HADLEY: Yeah, I would just be interested in what...it is interesting because I have a number of friends who are members of ABATE in Kearney and a common...I don't know, I can't say everybody, but a number of them say exactly what a number of you have said, that I will wear a helmet, but I want the law repealed. I hear that a lot, so I'll just make that comment. [LB52]

ROBERT AILOR: Okay. Thank you. I will get you the information if I can find it. I will get you and I will respond to you one way or the other. [LB52]

SENATOR HADLEY: Yeah, I was just curious as to what...okay, I appreciate it. [LB52]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thank you for coming again this year. I was just looking through the ABATE thing here and the number of fatalities, your most recent data, this may...I'm not trying to answer your question... [LB52]

SENATOR HADLEY: Okay. [LB52]

SENATOR JANSSEN: Can I ask a question about this is across the United States nearly 5,000 fatalities in this particular year, it's 2008, 59 percent of the fatalities were people wearing a helmet and 41 percent are not. The telling fact in all this is it doesn't break it down helmet or not helmet is that 37 percent were impaired by blood alcohol content of some sort. And so it appears in some cases it appears to be more of a correlation between drinking alcohol and riding a motorcycle than a helmet or not wearing a helmet. [LB52]

ROBERT AILOR: I would agree with that, Senator. I think that the two largest contributing factors to motorcycle fatalities are speed and riders who ride impaired. And perhaps stricter enforcement of the speed limits and I know that the state goes to a great deal of effort to try to keep impaired riders off the road and I support those efforts. [LB52]

SENATOR JANSSEN: And I also know, and maybe you could elaborate a bit, ABATE

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also has undertaken that, the education as far as alcohol. [LB52]

ROBERT AILOR: Yes, in every newsletter we have...in every monthly newsletter we have that in there. [LB52]

SENATOR JANSSEN: Thank you very much. [LB52]

SENATOR FISCHER: Thank you, Senator Janssen. Any other questions? I see none. Thank you very much for coming in today. [LB52]

ROBERT AILOR: Thank you, Senator Fischer. [LB52]

SENATOR FISCHER: Next proponent, please. I would like to note for the record that we have been joined by Senator Kathy Campbell from Lincoln. Good afternoon. [LB52]

STEVEN TAYLOR: Good afternoon. My name is Steven Taylor, that's S-t-e-v-e-n T-a-y-l-o-r. You may note that I am wearing an ABATE shirt. I am an ABATE member. I do not speak for ABATE. I thought I would bring to this committee of something unusual. They always have the components come in here and tell about all these people that die because they have helmets, my wife had two accidents, very bad, and she was wearing a helmet on both of them. My wife wears a helmet all the time. I do not always wear a helmet. I would like to have the freedom of choice. Her first accident, she reached her hand out, she broke her left hand. She had about six months to recover. Second accident was somebody else in front of her, a young person, and in doing so, that broke both of her arms. Her helmet never came into play. Her leathers never came into play. Basically she just reached her arms out, stopped herself, broke both arms. She was in about a year's worth of recovery. Excuse me, a little nervous. Anyway, I've always heard these opponents tell me about how all their people would have been alive today if they had been wearing a helmet. My wife is alive today, she's had two accidents. I've had several and I can't say I was wearing helmet, and I would prefer not to wear a helmet under certain situations. But I am also one of the big people that like the freedom and basically the choice of choosing what I want to do. I just thought I would bring it up to the idea that you always hear horror stories about people having accidents. This is a horror story that she wore a helmet, she always wears a helmet, and in doing so she survived two accidents, not because of the helmet. That's the end of my (inaudible). [LB52]

SENATOR FISCHER: Thank you, Mr. Taylor. Any questions? I see none. Thank you very much. [LB52]

STEVEN TAYLOR: Thank you very much. [LB52]

SENATOR FISCHER: Other proponents? Good afternoon. [LB52]

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MARK AMIDON: Good afternoon. My name is Mark Amidon, M-a-r-k A-m-i-d-o-n. I'm a district coordinator, District 6 which represents Omaha. I'm just here briefly, I live...unfortunately I live in Omaha and 90 percent of the time I will ride in Iowa. Now I've ridden a majority of the roads in Nebraska. I'm one of the...I like to enjoy the ride so going to Sturgis, I'll head up, go up through Valentine and take my time. A lot of my friends ride up right to South Dakota, head straight across I-90, want to get there fast. I like to enjoy the ride and the scenery, but I will say this, I've taken trips. Several years ago I went on a trip, I went to Colorado, New Mexico, Arizona, Utah, back across Colorado, and if I have immunity here, I got about Paxton and I went, oh crap, I don't have my helmet on, because I didn't have to wear my helmet that entire trip. But I got back to Nebraska. I'm riding along and I thought, oh darn, I don't have my helmet on, so I had to stop and put my helmet on, ride across the state. But I will tell you, you just believe me where I do and riding on the weekends over in Iowa, you go to Crescent, Iowa, just across the bridge, and there might be 20 to 25 bikes at that gas station in Crescent, Iowa, and 10 bikes waiting to fill up their bikes, and we're riding up 183 and every little town from Crescent all the way to Sioux City on the Iowa side, they're packed with motorcyclists. They're either having an event, might just a...filling up for a ride on a Sunday nice day. But they get their choice of the freedom. I'm not saying, you know, it should be your choice. I prefer not to wear a helmet. That's my choice. I'll wear it if it's raining, or if it's hailing out and you don't want to get beaten in the head with hail. But that's my choice. My ex-wife went on that trip with me. She rode with her helmet on the whole trip. That was her choice. I'm not advocating...I won't tell anybody that I'm riding with, hey, what are you doing with your helmet on? I mean, we...as soon as we get across the bridge in Iowa, we pull off on the side of the road and maybe two-thirds of our group will stop, put our helmets in the saddlebags and we're off for the day and come back and stop and put them on before we come back to Nebraska. You ride up through Decatur, up around through Norfolk, go up that route, every little town you go to is a ghost town. Some of us might go up to Decatur and go across the bridge and head up to Onawa, you know take that route. But you go through these little towns, nobody rides in Nebraska. We have events and if they find out that our event is going to be taking place in Nebraska, our ABATE members of Iowa won't come over to Nebraska to ride in our event. We go over to all their events. Why? Because I have a choice. Just on an economic and the tourism dollars, I've ridden with the Vietnam vets on their ride to the wall and we meet at the Colorado-Nebraska border and there might be 2,500 riders heading to the wall in D.C. and the Vietnam vets, the two times I've done this, about 50 people out of that 2,500 will ride across the state of Nebraska symbolically for the fallen brothers heading to the wall, but the rest of the group goes down through Kansas and they all meet up later down either in Kansas City or whatever heading to D.C. A majority of people avoid this state because of the helmet law. So I know from the border to Omaha, I'm going to, you know, there's two tanks of gas on my bike and I'm just one person. And Sturgis is another; everybody goes right around our little island here because every state around us does not have a helmet law. We're losing a lot of

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revenue. That's all I have to say. [LB52]

SENATOR FISCHER: Thank you very much. Any questions? I see none. Thank you very much. [LB52]

MARK AMIDON: Thanks. [LB52]

SENATOR FISCHER: Other proponents? Okay, we'll try this again. Would you raise your hand if you're a proponent, please? Any other proponents? Okay. I see none. Pardon me. Just testifiers, yes. Good afternoon. [LB52]

MIKE HAMMER: My name is...hello, thank you, I'm sorry. Thank you to the committee for hearing my testimony. I've just got a couple of short things to say. [LB52]

SENATOR FISCHER: If you could state and spell your name, please. [LB52]

MIKE HAMMER: Oh, Mike Hammer, Mike, M-i-k-e, L., Hammer. I'm sorry, I'm nervous. [LB52]

SENATOR FISCHER: Thank you. [LB52]

MIKE HAMMER: I've just got a couple of short things to say. This happened to my wife and I not too long ago. We were with another group and one of those folks had a car. We went into Iowa and put our helmets in the car. During our trip, unknown to us, pre-cell phone days, she broke down. Okay, we have to go home somehow. We stop in Decatur and we can't basically leave. We have no helmets, we can't go home. People steal helmets all the time. You lay your helmet on your bike like most people do and you go into a business, you come out, it's gone, you're right there, you can't move until you get another helmet. The only thing I got to ask is, does everybody here know that it's illegal to wear a helmet in a car? You can get a ticket for wearing a helmet in your car. It's impairment. When you ride a motorcycle it impairs you a lot more and you need your senses. Thank you. [LB52]

SENATOR FISCHER: Okay, thank you. Any questions? I see none. Thank you very much. Any other proponents to testify? Any other proponents? I see none. (See also Exhibit 17) Opponents, please. Would the first opponent please step forward. Good afternoon. [LB52]

CHRISTOPHER HART: (Exhibit 4) Good afternoon. My name is Christopher Hart, C-h-r-i-s-t-o-p-h-e-r, last name Hart, H-a-r-t, and I'm the vice chairman of the National Transportation Safety Board. Thank you, Chairman Fischer and the committee members. I'm here representing the NTSB in opposition to LB52. I'd like to thank Senator Lathrop for inviting me to the...inviting the NTSB to appear before this

committee and I'd like to thank the committee for allowing us to appear. We've been very concerned that despite a decline in motorcyclist...in motor fatalities in the last decade or so, motorcyclist fatalities have been increasing and it's become enough of a concern that it's now on our most wanted list for motorcycle helmets. My written testimony discusses the effectiveness of motorcycle helmets and saving lives and reducing injuries, as well as the effectiveness of laws that require motorcyclists to wear helmets, but I won't go into that in great detail because this state has already taken a leadership position by having an universal motorcycle helmet law. Instead, and I'd be happy to answer questions about those two issues, but instead I would like to take the time for my oral testimony on the issue that is before the committee today which is changing Nebraska law to eliminate the requirement that all motorcyclists wear helmets at all times. I will address this issue by looking at six other states that have weakened or eliminated their helmet laws. I'll start with Louisiana, which amended its helmet law in 1999 to remove the universal requirement for helmet use whereupon the fatality rate increased by more than 25 percent with unhelmeted accident-involved riders experiencing head injuries at twice the rate of helmeted riders. Nearly 60 more motorcyclist died in the two years following the law's repeal than in the two years preceding it. In 2004, in response to the continuing rise in deaths and injuries, Louisiana reenacted the universal helmet law and saw the total number of motorcyclist deaths decline in 2004 and 2005. Arkansas repealed it's universal helmet law in 1997 after which it experienced more than double the rate of unhelmeted crash fatalities and more than doubled the hospital admission rate for unhelmeted motorcycle crash survivors. Texas repealed its universal helmet law in 1997. More than 80 additional motorcyclists died in the two years after the law was repealed than in the two years preceding it. The number of unhelmeted riders with traumatic brain injuries increased by a factor of almost 10 in only four years from 55 in 1997 to 511 in 2001. In Kentucky motorcycle fatalities increased from 26 the year prior to repeal to 42 in the year after repeal. In addition, hospital charges alone will average more than \$25,000 more for the unhelmeted motorcyclist than for the helmeted motorcyclist involved in an accident. This illustrates vividly that this is not just a human tragedy issue, but it's also a fiscal issue regarding so many riders who can't...very few people would have enough insurance to pay to take care of a person who has been disabled for life or to take care of their family if they were killed because they didn't have a helmet. So the \$25,000 more for the unhelmeted motorcyclist is a big fiscal issue because much of that money is public money. Florida repealed its universal helmet law in 2000. After the repeal, motorcycle deaths increased by almost 50 percent and the number of serious brain injuries doubled. In the two years after Pennsylvania changed its law to limit the helmet requirement to riders with limited experience and passengers under the...and riders and passengers under the age of 21, and I cite this example because it's very similar to LB52, the number of nonhead injury deaths increased by 25 percent and the number of head injury deaths increased by 66 percent. Motorcycle-related head injury hospitalizations increased 78 percent compared to 28 percent for nonhead injury hospitalizations. In the last 10 years, Nebraska has suffered an average of about 12

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motorcyclist fatalities per year. The NTSB opposes the enactment of LB52 because experience in other states warns us that LB52 would foreseeably increase Nebraska's motorcyclist fatalities and injuries. Thank you again and I would be pleased to take any questions that you might have. [LB52]

SENATOR FISCHER: Thank you, Mr. Hart, and welcome to Nebraska, nice to have you here. [LB52]

CHRISTOPHER HART: Thank you. Enjoyed your barbecue last night. [LB52]

SENATOR FISCHER: Well that's good, that's good. Nebraska is the beef state, you know. [LB52]

CHRISTOPHER HART: Yes. [LB52]

SENATOR FISCHER: Can you tell me a little bit about the National Transportation Safety Board? How is it formed? How are the board members chosen and how is it funded? [LB52]

CHRISTOPHER HART: Yes. National Transportation Safety Board is an independent agency that's created for the purpose of investigating accidents in all modes of transportation determining what caused the accidents and then issuing recommendations to try to prevent those accidents from happening again. So we do that in aviation; we do it in rail; we do it in maritime; we do it on major highway accidents; do it in pipeline accidents; all of the transportation modes, we are the investigators of the accidents. We have five members of the...excuse me. [LB52]

SENATOR FISCHER: Is it...you say it's an independent agency, it's formed by statute? [LB52]

CHRISTOPHER HART: Yes, it's formed by statute and it's independent because it has five members appointed by the President, confirmed by the Senate. And the five members have staggered terms; one term expires at the end of each year, so a new president can't just do a wholesale replacement of everybody. The statute requires that only three of the five can be of the President's party, so that creates a party balance. And the statute also says we are removable only for misfeasance or malfeasance in office, we are not removable for doing something that's, say, politically embarrassing. So that's what creates the independence that we have. [LB52]

SENATOR FISCHER: Okay, thank you. On page 3 of your testimony, the list of states that you go through, many of them, I guess I don't see that it's updated on what the current situation is. For example, if you look at Arkansas, the repeal of the helmet law was in '97 and you give the percentages for the 18 months following that. Do you have

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any current statistics? [LB52]

CHRISTOPHER HART: Yes. I don't have it handy, but I can provide it...all of our statistics come from the National Highway Traffic Safety Administration. You'll hear testimony today. She may not have it either, but we would be happy to provide that for you. [LB52]

SENATOR FISCHER: Okay. I would like current statistics if possible for Arkansas, Kentucky, Louisiana, Florida, and I guess that's it on it. You have them for Texas, at least from a journal, a medical journal that had it. [LB52]

CHRISTOPHER HART: We'd be happy to do that. [LB52]

SENATOR FISCHER: And then in Pennsylvania, glancing though, I think it's...I think you have it in 2008, a study by the university there. [LB52]

CHRISTOPHER HART: Correct. [LB52]

SENATOR FISCHER: But if you have your statistics is what I'm interested in for those states that you listed. [LB52]

CHRISTOPHER HART: Yes, what I'll have is the federal statistics compiled by the National Highway Traffic Safety Administration, I'd be glad to provide that. [LB52]

SENATOR FISCHER: Okay. Thank you. [LB52]

CHRISTOPHER HART: Thank you. [LB52]

SENATOR FISCHER: Other questions? Senator Dubas. [LB52]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you very much for coming today. You've mentioned, I believe, Louisiana is one of the states that reenacted its... [LB52]

CHRISTOPHER HART: Correct. [LB52]

SENATOR DUBAS: Are there any other states that reenacted after (inaudible). [LB52]

CHRISTOPHER HART: Of the six examples I have, I do not have any others but Louisiana that reenacted after that. [LB52]

SENATOR DUBAS: All right. Thank you. [LB52]

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SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB52]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. I was just reviewing your most wanted list here and there are some other things, apparently, you want us to do, enact primary seat belt enforcement laws. [LB52]

CHRISTOPHER HART: That's correct. We're very pleased that Nebraska has taken a leadership role in several respects in highway safety. For example in child safety, child passenger safety and teen driving and drunk driving and that's one of the areas that we would like to see additional progress in, but so. Nebraska has been a leader in the states in very progressive highway safety program. [LB52]

SENATOR LAUTENBAUGH: It looks like there is a lot of other recommendations for motor carriers, motor coaches and whatnot. [LB52]

CHRISTOPHER HART: That's affirmative. [LB52]

SENATOR LAUTENBAUGH: Do we know how we're going to pay for these things? [LB52]

CHRISTOPHER HART: Well, many of them are paid in various ways; if you give me a specific example I can tell you how its typically going to be paid. [LB52]

SENATOR LAUTENBAUGH: Well some of the electronic on-board data recorders for...it looks like motor coach carriers. [LB52]

CHRISTOPHER HART: Yeah, that would typically result from the requirement from the Federal Motor Carrier Safety Administration to require motor carriers to have electronic on-board recorders and then the motor carriers would have to pay for them, typically, themselves. I'm not aware that Federal Motor Carrier Safety Administration would pay for those. [LB52]

SENATOR LAUTENBAUGH: Then we talk about redesigning motor coaches to increase safety. [LB52]

CHRISTOPHER HART: That would be a job of the manufacturer of the motor coaches if the Federal Motor Carrier Safety Administration requires it. [LB52]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB52]

CHRISTOPHER HART: Yes. [LB52]

SENATOR FISCHER: Other questions? Senator Hadley. [LB52]

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SENATOR HADLEY: Senator Fischer. We've heard a lot about individual rights and such as that, and you're with the National Transportation Safety Board, from a policy standpoint, what should be the role of government, vis-a-vis, individual rights versus safety issues? I'm sure you must have wrestled with this at the national level. [LB52]

CHRISTOPHER HART: That's certainly a very good question and that's the decision that you all are paid the big bucks to decide because that's going to be a decision that you have to make. (Laughter) I'm not here to tell you how to do that. I'm here to give you the facts that will help you make a more informed decision, but I'll just give you an example because all these same arguments came up with respect to seat belts. It's my decision, it's my body, I can decide whether to belt it or not. Why is the government telling me...but yet most states have decided that it is fiscally prudent because the cost that they pay for people who are injured or killed from not having seat belts far outweigh what it takes when...that far outweigh the loss of personal privacy in having to do a seat belt. We heard speed limits. Speed limits are a restriction of personal choice too because if I want to go beyond 55 because the speed limit says 55 I can...that's a personal choice, but the states have decided that speeds limits are a good idea because the cost of...the personal freedom that you lose from having to obey the speed limit is more than outweighed by the benefit to society of not having to pay for people who are killed because they go too fast. So that's an individual decision that each state must make. We are not here to tell you how to do that; we're here to give you the facts that help illuminate that decision as much as we can. [LB52]

SENATOR HADLEY: Okay. Thank you, Mr. Hart. [LB52]

CHRISTOPHER HART: Thank you. [LB52]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. Thank you for testifying today before us. The NTSB, that's taxpayer funded? [LB52]

CHRISTOPHER HART: Correct. [LB52]

SENATOR JANSSEN: And you're here to give the facts, and you gave some facts. [LB52]

CHRISTOPHER HART: In the national perspective, in particular, regarding those facts, that's correct. [LB52]

SENATOR JANSSEN: But what you didn't include and I just picked out the states you said and you mentioned...of all these states that had their helmet laws and never mind

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the fact that generally when a helmet law is passed motorcycle use goes up in all those states, so that may be a little bit of a misinter...or a interpretation sided towards the side of not wearing helmets...or wearing helmets, I'm sorry. And I picked out the states of the fatalities in those states that you mentioned, and this is 2008 using the same data, of those states, the percent of fatalities 37 percent were alcohol related, 63 percent, 41 percent, 36 percent, 40 percent, 46 percent, so by your own admission to come here for safety facts shouldn't you have been giving us those facts as well? [LB52]

CHRISTOPHER HART: That's a good question because, for example, the use of alcohol goes to causing an accident in the first place. Helmets don't affect the cause of the accident. What we're talking about is if all of these prevention measures, and nobody would question, it's far better to prevent the accident in the first place than to try to cure it after it happened. So aside from preventive measures like don't drink, once the accident occurs for whatever reason, and who knows what reason that could be, it could be the motorcyclist's fault, it could be the driver's fault, it could be the weather, it could be lots of things, the point of the helmets is that it goes for...if all these prevention measures that everybody is taking, and a lot of people are taking a lot of them, fail. And so now we're trying to mitigate the extent of the injury if there is an accident so I didn't cite the alcohol, for example, because that goes to the cause of the accident. I'm trying to give you facts that relate to what happened after the accident has occurred and try to mitigate the effects of the accidents. I'm not...this was not an issue relating to try to prevent the accident. We would all agree, prevention is far better than curing. [LB52]

SENATOR JANSSEN: And you didn't mention or cite that there is a percentage...there is an increase in motorcycle use or highway miles when a helmet law is enacted which many of the proponents indicated we'd have more economic development or tourism dollars if we did this. And that is pretty well substantiated that it does happen. Certainly in the state like Nebraska one would conclude that it would happen based on our proximity to nonhelmeted states. So that's another fact that you didn't mention in your data. You just gave us one side of the data. [LB52]

CHRISTOPHER HART: I was trying to give the approach on the safety side and give the safety statistics regarding the data. [LB52]

SENATOR JANSSEN: So by just giving us half the data. [LB52]

CHRISTOPHER HART: Well I won't say half, I was just giving you the safety data. [LB52]

SENATOR JANSSEN: Sure, for your side. I understood. Did you drive a motorcycle here today? [LB52]

CHRISTOPHER HART: I did not, I came on an airplane from Washington, D.C. [LB52]

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SENATOR JANSSEN: Was it a commercial flight? [LB52]

CHRISTOPHER HART: Commercial flight, yes. [LB52]

SENATOR JANSSEN: Okay. Seat belts and everything, right? [LB52]

CHRISTOPHER HART: Seat belts and everything. (Laughter) Pretzels and everything. [LB52]

SENATOR JANSSEN: Thank you for coming to our state. [LB52]

CHRISTOPHER HART: My pleasure, my pleasure. [LB52]

SENATOR FISCHER: Thank you, Senator Janssen. Senator Price. [LB52]

SENATOR PRICE: Thank you, Senator Fischer. Mr. Hart, thank you for coming and testifying today. From a national perspective, could you characterize what's going on in motorcycle use, is it on the rise? Is it level? Or are we seeing an increase in just the participation and the use of motorcycles in daily traffic? [LB52]

CHRISTOPHER HART: That's a good question and I'm not sure we have a good answer because motorcycle-use data, I'm not sure anybody collects it in any reliable way. We don't have...we heard mention of the fact that the motorcycle fatalities went up and then came down for a year, what we don't know is what the safety experts would really like to know is the rate which is how many events divided by how many uses, we don't have the good use data. We don't have good data regarding...all we have is just generalized data. We look at the economy and we see that car use went down when the economy got worse; motorcycle use probably did too, but that's it. We don't have good hard data on that. [LB52]

SENATOR PRICE: Would you be able to draw any conclusions from motorcycle licenses at an increase or decrease and the sale of motorcycles? I mean I would think there would be somewhat analogous. [LB52]

CHRISTOPHER HART: We have data on motorcycle registrations; what we don't have is on motorcycle use. [LB52]

SENATOR PRICE: All right. But thank you very much. [LB52]

CHRISTOPHER HART: And we can make correlations of the fatalities to the registrations, but that's of limited usability because we don't...the real question is how much...what's the rate, what's the number of events versus the number of usages. We

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don't have a good database on the number of usages. [LB52]

SENATOR PRICE: Thank you very much. [LB52]

CHRISTOPHER HART: Yes. [LB52]

SENATOR FISCHER: Other questions? I see none. Thank you for coming in today. [LB52]

CHRISTOPHER HART: Thank you. Thank you for having us. [LB52]

SENATOR FISCHER: Could I see a show of hands of the number of opponents to the bill? Okay, we see one, two, three, four, five, six, seven, eight, nine, ten, eleven. Okay. Thank you very much. Just wanted to give Senator Pankonin a heads up here that it's going to be a while still. We'll come and find you, Senator. Good afternoon and welcome. [LB52]

ROMELL COOKS: (Exhibit 14) Good afternoon. My name is Romell Cooks, R-o-m-e-l-l, Cooks, C-o-o-k-s. And I was also invited by Senator Lathrop to come and testify today by providing some data on motorcycle helmet safety and motorcycle helmet use. I work for NHTSA. I'm the regional administrator in Kansas City. The goal of NHTSA is to reduce motorcycle fatalities and injuries and the societal cost related to motor vehicle crashes. There were 34,000 fatalities in vehicles last year; 2.2 million people injured; \$230 billion worth of societal costs. But I really want to discuss how Nebraska's motorcycle helmet use law helps reduce the number of motorcycle deaths and injuries on Nebraska's roadways. The question was raised earlier about what's happening with motorcycle use. Between 1999 and 2009 there was a big increase in motorcycle registrations, up 87 percent. But the fatalities increased by 114 percent, so there's some...they're not actually equal as to what's going on with the number of registered bikes which doesn't indicate vehicle miles of travel or amount of use, but it does say that fatalities are outpacing the number of registrations. Nebraska's motorcycle safety program includes really a fairly comprehensive program that involves education, rider licensing, and good emergency response systems when there is, in fact, a crash. And what we would like to say from NHTSA is that your program is really pretty much comprehensive which includes, of course, the current motorcycle helmet use law which covers all riders. The law in Nebraska is saving lives. We know that it's preventing injuries and it is reducing healthcare costs. In 2009 alone NHTSA estimates, this is based on our fatal accident reduction analysis system, it estimates that the helmet law in Nebraska saved six lives. These six motorcyclists were somebody's mother, father, son, grandson, granddaughter, and of course any time you can save a life that's a good thing. Few highway safety topics have been as well researched and as closely examined as motorcycle helmet use and a lot of the study results you heard from the NTSB were studies that were done by NHTSA and he already gave you that data so I

won't repeat those. What we did see as one fact that he didn't give is that the average hospital charges for the first admission of an injured motorcycle crash, and this is based on CODES data from Nebraska which is hospital admissions data. The motorcycle crash victim in Nebraska is approximately \$14,000 compared to the approximate \$5,000 for injured crash victims in passenger cars. There's really no compelling evidence that we've been able to find that said that wearing a motorcycle helmet is a dangerous thing. Head impacts that would otherwise cause fatality or permanent injury are often mitigated with little or no injury to a motorcyclist by simply wearing a Federal Motor Vehicle Safety Standard Number 218 compliant motorcycle helmet. And he gave you a lot of evidence from states that have repealed laws and what happened with those laws and I would just have to say in general that most the time what we saw was something...a negative effect. One of the biggest thing was, in a state that had like a 97 percent compliance rate with wearing a helmet, which was Arkansas, when they did away with the law, that use rate went down to about 50 percent in Arkansas. Their EMS data showed that head injuries rose to 31.6 percent in all crashes. That's the first seven months comparing between before the helmet law was changed and after compared to 20 percent. There's no predicting precisely what will happen, but we do think that it will be...you'll see a decrease in motorcycle helmet use in the state. Someone was asking about...this is in your package, this particular study, the helmet use study, that's produced by NHTSA showing comparison of 2010 data and 2009 as far as helmet use. It is not broken out specifically by state, but it is by Midwest and it does show that the helmet use declined in the Midwest from 67 percent in '09 to 43 percent. This is just all the Midwestern states which are the states that I work with. And so we do know that the helmet use rate is declining. The more states do away with their laws, the less people wear helmets. But I guess the thing that we are saying, Madam Chairman, is that we think that it would be to the state's benefit to keep its law. When heads hit the ground or hit the concrete or hit the pavement they're just not strong enough to withstand the impact. Even in slow speed crashes and the helmet could help prevent death by doing that. Helmets mitigate the risk of brain damage, head injury, so we would like to say that it is beneficial to the state based on prior studies in other states that Nebraska keep its helmet law where it can be the most effective at keeping the helmets on the heads of the folks in Nebraska. And I'd like to thank you all for inviting us to testify. There are other studies in your package that I left for each one of you that talks about the change in motorcycle-related head injury deaths and hospitalizations. What happened with the Pennsylvania law was repealed. National study of pediatrics that talks about youth motorcycle-related brain injuries. As it relates to us, LB52, where we're talking about mostly protecting young drivers, our data shows that the people who are most involved now in motorcycle crashes are people who are over the age of 21 which is an interesting factor for us as an agency when we looked at that because more people are moving from cars to the larger bikes, sometimes without the experience of handling a larger bike and the age of the person involved and fatalities and injuries is getting older rather than being the younger rider. [LB52]

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SENATOR FISCHER: Thank you, Ms. Cooks, appreciate it. Any questions? Senator Price. [LB52]

SENATOR PRICE: Thank you, Chairman. Ma'am, I got a question. If riding with a helmet is a preponderance belief by the federal government and national organizations to be the best thing to do, why is there not a national law mandating it, like their speed limits? [LB52]

ROMELL COOKS: Well you know when those of us in the safety business that's what we always ask; why don't we just sanction every state and force them to get one like 21 drinking age? But, you know, the thing is, is that we work with states because we feel that states best make rules for their citizens, that it should probably be a state's decision. As a matter of fact, it was in my testimony, but because I had three minutes I took that out. That we are trying from the national level to give the data to the states to do the research for the states and what's happening and let the states decide rather than mandating. We often say to the folks that we work with in Congress, you know, a sanction gets things done very fast, like .02 for youth and .08 for alcohol and 21 for drinking. But you know, we say that there are some things that we think that the states can decide for themselves. The other thing is, when you think about why don't we have a mandatory national seat belt law? We know how well they work; we see what happens with that. But that hasn't happened either. We have tried the idea of incentives as opposed to sanctions. States that have certain things in their motorcycle safety program can get additional dollars to help with educating the drivers to watch out for motorcyclists and we've taken the incentive approach rather than the sanction approach. [LB52]

SENATOR PRICE: All right, thank you very much, ma'am. [LB52]

ROMELL COOKS: Your welcome. [LB52]

SENATOR FISCHER: When you say, you know, you don't want to mandate it, but yet in your testimony you talked about, I believe it was Arkansas that repealed it and they went from about 90 percent compliance to 50-some percent compliance. Obviously then at the state level, they didn't want this, right? [LB52]

ROMELL COOKS: Right. [LB52]

SENATOR FISCHER: But your...I guess I'm thinking that you're coming in saying, but yet we know better and this is what you should do. [LB52]

ROMELL COOKS: No, we're saying this is... [LB52]

SENATOR FISCHER: But yet you're not going to mandate us to do it. [LB52]

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ROMELL COOKS: Well as they...as a person of the federal government, I can't say...because...I guess if I could, I'd say Nebraska... [LB52]

SENATOR FISCHER: I'm from the federal government and I know what's best. [LB52]

ROMELL COOKS: Right. I'm trying not to say that. [LB52]

SENATOR FISCHER: That would be good. (Laughter) [LB52]

ROMELL COOKS: Because what we think is Nebraska does know best because you've had your law for a very long time. And you have saved lives over a lot of years. Whereas, if in fact, like it happened in Arkansas, you were to repeal the law, I would think that you would see a spike very, very quickly in the number of people dying of head injuries and brain injury in this state. And I think based on our research that that has been shown to happen over and over again. [LB52]

SENATOR FISCHER: If it is shown to happen over and over again, why do people in the state and why do the states then repeal these laws? [LB52]

ROMELL COOKS: Because I think the people who are doing the... [LB52]

SENATOR FISCHER: Because we don't know any better? [LB52]

ROMELL COOKS: No, it's not because you don't know any better. [LB52]

SENATOR FISCHER: I'm putting you on the spot. [LB52]

ROMELL COOKS: You guys do know well because you haven't done it and I hope that you will continue not to do it. [LB52]

SENATOR FISCHER: Fair enough. [LB52]

ROMELL COOKS: All right. [LB52]

SENATOR FISCHER: Other questions? Senator Hadley. [LB52]

SENATOR HADLEY: Senator Fischer, thank you. There's a sentence, I think it's on page 3, says, a crash outcome data evaluation system, CODES study found that motorcycle helmets are 67 percent effective in preventing brain injuries and that unhelmeted motorcycle involved in crashes were three times more likely to suffer brain injuries than those wearing helmets. And I guess what I wrestle with is, is the cost to society, the cost to the citizens of Nebraska that that entails versus the freedom to not

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wear a helmet. To me that's exactly what it boils down to. Because you have data that shows the outcomes, at least this is here, and whether or not the cost to society in Nebraska, the citizens of Nebraska outweighs the personal freedom to not wear a helmet and undergo these risks. [LB52]

ROMELL COOKS: Right. That is the question in a lot of areas where states have to make a decision. Do I want to mandate that every person in my state have to wear a safety belt or do we...or can we continue to afford to pay the bill to let them have the freedom of not doing it. And if your state is in better financial shape than a lot of other states, perhaps you could pay that bill without any stress to the state. However, when we know that you're three times more likely to have a head injury by not having a helmet on and that those people who are brain damaged require tremendous amounts of care through hospital systems over a long term and that the families of those people who are injured in those crashes also have to be cared for, those are the things you have to weigh when you decide what is better for the state--the freedom to chose to not to wear your helmet for a segment of the society that will pay the bill that affect all of society. [LB52]

SENATOR HADLEY: Okay. Thank you. [LB52]

SENATOR FISCHER: Other questions? Senator Campbell. [LB52]

SENATOR CAMPBELL: Yes. In those states and the statistics where they talk about...that this...they have a partial law, is that age related? [LB52]

ROMELL COOKS: Partial law is age related, yes. Normally it covers the younger drivers, like I said, those that are inexperienced, 15 to 21, or 15 to 18, those laws cover that segment of the society. Once you get to be 21 you're either more experienced or your head gets harder, I don't know which. But you get to not wear your helmet. Or maybe you're adult enough to decide I can afford to pay my own way if I, in fact, get a head injury or I can manage this better because I ride better. But whatever reason the state has chosen to make it apply to those who maybe are not experienced enough to ride and handle a bigger bike or handle a bike at all. [LB52]

SENATOR CAMPBELL: Last year when we discussed this, we spent a great amount of time on insurance and whether you had insurance and what type of insurance that we should require and it was that we couldn't require it. Do you have any breakdown of the states in terms of what they might require in ancillary requirements and in insurance? [LB52]

ROMELL COOKS: I don't. As a matter of fact, I think that's new thinking when we think about, you know, motorcycle helmet laws. If you don't have a law then you require the rider to have some special insurance coverage. I mean that's kind of a new approach to

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dealing with why we would okay to have not to have a helmet law. I don't have any data like that. I can try to find some for you. But normally when we talk about the...we were talking about...I just gave in my testimony that for an injury in a motor vehicle crash when you go into the hospital it's like \$5,000. When you go in from a motorcycle crash, the average cost is \$14,000. And so if you have a \$20,000 worth of insurance coverage, and you have an injury, I don't know how long that lasts. Is it for one crash, or ten crashes, every time you get \$20,000, I don't know how that works. But I can see what's going on around our state. We have an office that focuses on motorcycles in Washington and, Senator Campbell, I will see if I can find something additional on that for you and send it back to you. [LB52]

SENATOR CAMPBELL: That would be great. Because I'm sure the senators are like I am, they also go to the extreme on this where you go someplace and somebody says, well, if I could get the person to sign that for the rest of their lives they would never be a liability to the state of Nebraska and any healthcare, you know, line item amount then I suppose I could let them do that. Well, I just don't know how realistic that is either. So I'm kind of looking at... [LB52]

ROMELL COOKS: I cannot imagine a state not treating a person who is severely...has a severe brain injury who really can't manage for themselves, how could you not treat that person when their insurance runs out? [LB52]

SENATOR CAMPBELL: I'm sure from a federal Medicaid perspective you would have to serve them. [LB52]

ROMELL COOKS: Sure. [LB52]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Dubas. [LB52]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Ms. Cooks, for being here. On a previous bill that we talked about earlier in the session, we were talking about our motorcycle training courses and I believe the statistic that was put out is like we have one in four of our drivers who are taking advantage of that training. But that it appears to show that if you take training, you're going to tend to make better choices, be a better trained driver, do a better job of driving, my question is, do you do anything through your organization that helps "incent" drivers to take these types of training courses. Is that anything that falls in your purview? [LB52]

ROMELL COOKS: The only thing that we have done as an agency is to give a state a special part of money, I think it's called 1906 Funds, that does help the state support education programs. And I believe that Nebraska has some of that money, but because your education program isn't mandatory, you don't have to go. [LB52]

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SENATOR DUBAS: All right. Thank you very much. [LB52]

ROMELL COOKS: There may be somebody in Nebraska who could speak better to that. So I'm going to... [LB52]

SENATOR DUBAS: Thank you. I just wanted to know from your perspective what... [LB52]

ROMELL COOKS: Okay. But, yeah, our monies can be used to educate riders and drivers in cars. You know, there's some think of it, a lot of times the crashes because the car doesn't see the motorcycle and so there's awareness programs, billboards, PSAs to say watch out for motorcycles and so. [LB52]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB52]

ROMELL COOKS: Thank you. [LB52]

SENATOR FISCHER: Next proponent, please. I'm sorry, next opponent, please. Welcome. [LB52]

JOSEPH STOTHERT: (Exhibit 18) Thank you. My name is Joseph C. Stothert. I'm a physician at the University of Nebraska Medical Center. I'm director of trauma and surgical critical care at the university. And I'm also medical director of the state of Nebraska for trauma. I have come to Lincoln today to testify as a private citizen concerning my support for the current law as it stands and I am in opposition of LB52. The helmet law should be maintained because it is the right thing to do medically for the citizens of the state of Nebraska and surrounding states and also it is the most economically sound thing for the senators to maintain this in difficult budgetary times. I will present you with real data from one of the major trauma centers in the state of Nebraska concerning the utilization of helmets, as well as overall statistics from the state trauma registry. I am basing my comments on 258 human beings, motorcyclists who have been injured and cared for at the University of Nebraska Medical Center from 2001 to 2010. Interestingly, 80 percent of Nebraskans wore helmets and because we're right on the border with Iowa, only 36 percent of the "Iowegians" wore helmets on presentation to our trauma center. Severe head injuries were found in 19 percent of patients with helmets, and 26 percent of patients that were known to be without helmets. Neck fractures were found in 22 percent of patients wearing helmets, and 35 percent of those individuals not wearing helmets. Death occurred in 3 percent of these patients with helmets and 8 percent without helmets. The total charges for the 258 motorcyclists injured accounted for somewhat over \$13 million at our institution. Twenty-nine percent were self-pay or Medicaid. I enclosed for your perusal this data put in chart form. The state of Nebraska also maintains a registry of injuries suffered and in our trauma registry for the state, we were able to identify a total of 2,349 motorcyclists

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and ATV riders who were injured between 2005 and 2010. The overall mortality for ATV riders wearing helmets was one death out of 74 patients for a fatality rate of 1.33 percent. ATV riders wearing no helmets, 10 died out of 415 patients for a mortality rate of 2.41 percent. Motorcyclists showed very similar statistics in that with no helmets, 18 out of 232 patients died for a mortality rate of 7.76 percent. And helmeted riders had 39 out of 882 patients dieing for a mortality rate of 4.42 percent. It is clear from the data presented both at my trauma center and across the state that not wearing a helmet increases the risk of dying by over 50 percent and increases the chances of significant disability in those people that survive. This accounts for an unnecessary burden to the state as far as self-pay and Medicaid costs. Although statewide numbers are not available, if you look at our own trauma center numbers, this accounts for millions of dollars per year. I strongly urge each and every senator to look at what they are doing when they try to repeal a law that saves lives and saves money. I thank you and all members of my trauma team who were listed on this document thank you for your attention. [LB52]

SENATOR FISCHER: Thank you, Doctor. Are there questions? Senator Campbell. [LB52]

SENATOR CAMPBELL: Thank you, Senator Fischer. Doctor Stothert, I want to look at the last sentence in your first paragraph there and specifically the 29 percent were self-pay or Medicaid. That \$13 million, that last sentence really has to do with the cost while they are in a medical facility, correct? Not the lifetime costs. [LB52]

JOSEPH STOTHERT: That's not lifetime costs. No, that's the two to three weeks that they're in the hospital. [LB52]

SENATOR CAMPBELL: So at this point, there's probably no way, unless we did a special study somewhere that one could extrapolate out and say that would be the...there's a lifetime, particularly from Medicaid cost there. [LB52]

JOSEPH STOTHERT: Well I can tell you how expensive it is to maintain fully institutionalized people and that is horrendous. Fortunately, that's pretty rare. And...but it is a tremendous burden on the families, tremendous burden on the state because they eventually run out of money and all end up on the state. [LB52]

SENATOR CAMPBELL: Thank you, Doctor Stothert. [LB52]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Price. [LB52]

SENATOR PRICE: Thank you very much, Chairman Fischer. Doctor Stothert, looking at your tables and numbers and I'm trying to make sure I have a correlation that is correct where with neck fractures to severe head injuries...head injury to death, I don't see the

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ones that are death due to neck fractures or helmets. [LB52]

JOSEPH STOTHERT: Those are insignificant. Most of the time, if it's a cervical fracture, that usually does not result in death if they're alive when they reach the hospital. [LB52]

SENATOR PRICE: And the cervical fracture, you talk about anywhere from atlas to C-6 there, are we looking...are we looking that if...because it was a helmet or wasn't a helmet, I'm trying to find where the helmet comes into the cervical fractures. [LB52]

JOSEPH STOTHERT: Well there has been data presented in the past that indicates that helmets cause cervical fractures. Our data suggests the opposite that cervical fractures are more prevalent in the unhelmeted individuals. And that's all this points out is that it doesn't sacrifice one injury for another. [LB52]

SENATOR PRICE: Okay then. that cervical injuries don't have the incident of death rate that's really a large number of (inaudible) of severe head trauma. [LB52]

JOSEPH STOTHERT: Correct. If they arrive at a tertiary care center and they're still alive, almost always with a cervical injury they'll stay alive. The quality of life may be somewhat decayed, but it's a...they usually stay alive. [LB52]

SENATOR PRICE: Okay. Thank you very much, sir. [LB52]

SENATOR FISCHER: Thank you, Senator Price. Other questions? I have just a couple for you. You list the motorcyclist, the ATV riders with the fatality rates there, do you have information on passenger vehicles how that...the numbers compare? [LB52]

JOSEPH STOTHERT: You mean passengers on the motorcycles? [LB52]

SENATOR FISCHER: No, no, no, passenger vehicles, cars; do you have information on the accidents that... [LB52]

JOSEPH STOTHERT: Oh yes. [LB52]

SENATOR FISCHER: How do those compare? [LB52]

JOSEPH STOTHERT: The death rate is approximately 5 percent in all comers with automobile accidents. [LB52]

SENATOR FISCHER: And do you have the numbers with the passenger vehicles and also the ATVs where you have it up above with the 258 motorcyclists injured with the 29 percent were self-payer, Medicaid, do you have a breakdown on that, first of all, with passenger vehicles and ATVs? And then I'd like the breakdown on the self-pay or the

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Medicaid on that 29 percent. [LB52]

JOSEPH STOTHERT: That data is all available; I don't have it with me. [LB52]

SENATOR FISCHER: Okay. Because you know if it is 29 percent Medicaid, that's one thing compared to...or if it's 28 percent Medicaid and 1 percent self-pay that's one thing, and it's another if you reverse those figures. [LB52]

JOSEPH STOTHERT: If you look at the chart as outlined, it does break down self-pay and Medicaid and looking at the total, 11 percent is self-pay, 18 percent is Medicaid in this group of motorcyclists. So that accounts for the 29 percent that is either self-pay or Medicaid. [LB52]

SENATOR FISCHER: Okay. [LB52]

JOSEPH STOTHERT: And that's on the right hand corner at the bottom of your chart under totals. [LB52]

SENATOR FISCHER: Right. Where you're taking Nebraska and Iowa totals? [LB52]

JOSEPH STOTHERT: Yes. Helmeted and unhelmeted. Medicaid being Medicaid from Iowa, Medicaid being Medicaid from Nebraska. [LB52]

SENATOR FISCHER: So it's 11 percent self-pay, 18 percent Medicaid for both Iowa and Nebraska. [LB52]

JOSEPH STOTHERT: Correct. But you also have to remember, this is only one trauma center. [LB52]

SENATOR FISCHER: Right. [LB52]

JOSEPH STOTHERT: And as you can tell, ours accounts for approximately about 10 percent of the state's load of injured motorcyclists. [LB52]

SENATOR FISCHER: Okay. And how many of the other trauma centers receive patients from out of state? [LB52]

JOSEPH STOTHERT: Almost all of the major trauma centers do because they're located on the periphery, with the exception of Kearney which still gets some people from South Dakota. [LB52]

SENATOR FISCHER: Do you have a high percentage of out-of-state, as I'm looking to see this, on the number of patients? [LB52]

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JOSEPH STOTHERT: We get a fair number of people from Iowa because they go across the bridge, take off their helmets and then they get injured. [LB52]

SENATOR FISCHER: You know, I see...I'll have to look at this in more detail, but it seems like you have more patients, as I'm just glancing through it, possibly more patients self-pay from Iowa. Would you say that's correct? [LB52]

JOSEPH STOTHERT: I don't think that's the case, it's pretty much across the board. [LB52]

SENATOR FISCHER: Okay. Okay. I will look at your numbers in more detail later. Thank you. If you have the information on passenger vehicles and the breakdown for those, I think that would be interesting also. [LB52]

JOSEPH STOTHERT: Certainly. [LB52]

SENATOR FISCHER: So thank you. Other questions? Senator Hadley. [LB52]

SENATOR HADLEY: Senator, thank you. Just two real quick questions. When you say self-pay, does that mean they actually pay or basically they were...had no insurance or...? [LB52]

JOSEPH STOTHERT: Yeah, yeah, the hospital pays for them. [LB52]

SENATOR HADLEY: The hospital pays for them. Secondly, I believe the data we had two years ago, the Creighton trauma had 40 percent of the trauma patients were either under insured or not insured. They had 40 percent of the people who were brought to the Creighton emergency room for trauma service, 40 percent either didn't have enough insurance to cover or did not have any insurance. And remember, Medicaid only...it doesn't go backwards. You can't have the trauma accident and then apply for Medicaid to pay for the emergency room and such as that. [LB52]

JOSEPH STOTHERT: But you can for ongoing care. [LB52]

SENATOR HADLEY: For ongoing. [LB52]

JOSEPH STOTHERT: Yes. And yes, I think the payer mix at Creighton is not quite as good as our payer mix. [LB52]

SENATOR HADLEY: That's right. But I just remember 40 percent, the 40 percent data. [LB52]

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JOSEPH STOTHERT: And we're still saying that a third of our patients are underfunded. [LB52]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. Just to clarify, and thank you again for being here, although you opposed me a couple of years ago and you're opposing again which I certainly respect your position based on the... [LB52]

JOSEPH STOTHERT: And hopefully we'll be here next year and the year after and the year after that. [LB52]

SENATOR JANSSEN: You should hope not. Maybe it won't get brought back. I certainly understand your position though. And we agree, I think you should wear a helmet; I think...I believe Senator Krist agrees with me on that as well. He'll get a chance to close. I just want to clarify one thing because you'd mentioned that going across, you have Iowa, or lowegians, going across, but they're Nebraskans, you said that you get a lot of trauma patients because they go across the bridge taken their helmet off. In reality though, don't you have a lot of Iowa patients that are Iowa citizens because you're major... [LB52]

JOSEPH STOTHERT: Yes, they don't have to take their helmets off. [LB52]

SENATOR JANSSEN: So they're not...it's not probably a little unfair characterization to say it's mostly Nebraskans going over, taking their helmets off, that are flying back. [LB52]

JOSEPH STOTHERT: No, there is a lot of them that do do that. And I can't give you the exact breakdown. Basically we consider someone from Nebraska where their zip code is from Nebraska and their home address. And that's how we define Nebraskans here and that's how we define people from Iowa. [LB52]

SENATOR JANSSEN: Bet your numbers would be a lot different if you defined it as Nebraskans that go to Iowa to register their car, but that's a whole different ball game for a different day. Thank you. [LB52]

JOSEPH STOTHERT: Or pay the wheel tax. [LB52]

SENATOR JANSSEN: Right, there you go. Thank you, Doctor. [LB52]

JOSEPH STOTHERT: Thank you. [LB52]

SENATOR FISCHER: Thank you, Senator Janssen. Thank you, Doctor, for being here.

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[LB52]

JOSEPH STOTHERT: Thank you. [LB52]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB52]

ANTHONY GUTIERREZ: Good afternoon, thanks for having me. My name is Sergeant Anthony Gutierrez, A-n-t-h-o-n-y, Gutierrez is common spelling, I'm just kidding, G-u-t-i-e-r-r-e-z. And, obviously, I'm employed by the Omaha Police Department. I'm part of the motorcycle unit on the department; I'm also part of the accident investigation team on the department and privately I'm an avid motorcyclist. So I kind of got it all covered. I'm here to tell you we'll do...we'll enforce any action that you guys decide, obviously, whichever way you choose to go, we'll enforce that as a law. I can tell you from my point of view as a supervisor of the accident investigation team on the Omaha Police Department that I get the phone call at 2:00 in the morning, 3:00 in the afternoon, whatever time it is to go investigate these fatalities that are happening involving motorcycles. And I can guarantee you one thing, the chance of surviving a motorcycle accident increases if you're wearing a helmet. It's not the save-all. I can point out plenty of cases here where people die from wearing a helmet. But I can also go to this family member and go, Clinton Lloyd, not wearing a helmet. Do you think if I went and knocked on their parent's door and said, your son might have a 50 percent chance of being here today had he worn a helmet. What do you think they would say? They would beg for that 50 percent. Every one of us in here would. And I think that it's our responsibility to make that decision for people that don't want to make it. That's just my opinion. If it has the chance of increasing a surviving motorcyclist, I think you should put this down. I can also go, Wade, Dewitt, not wearing a helmet, died in a motorcycle accident from head injury. I mean I can go on all day, these are just over the last couple of years. So I'd encourage you to make the right decision or at least in my opinion the right decision. But once again, from a department perspective, we'll enforce anything that you guys legislate. I guess that's really all I have. [LB52]

SENATOR FISCHER: Thank you, Sergeant. Are there questions? I see none. Thank you very much for coming down today. Were you representing the Omaha Police Department or speaking for yourself? [LB52]

ANTHONY GUTIERREZ: I'm representing the department as we'll enforce anything, obviously, that you enact and that we see it saves lives. [LB52]

SENATOR FISCHER: But I specifically need to know if you are here representing a position of the Omaha Police Department? [LB52]

ANTHONY GUTIERREZ: I was asked to come down here by the department, yes. [LB52]

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SENATOR FISCHER: Okay. Thank you very much. I need to know that for our committee statement. Thank you very much. [LB52]

ANTHONY GUTIERREZ: Thank you. [LB52]

SENATOR FISCHER: Next opponent, please. And I'm sorry, but we don't allow props. [LB52]

DUANE SCHROEDER: Oh, I'm sorry. [LB52]

SENATOR FISCHER: It's because we can't...if you hold something up, we can't describe it for the record. [LB52]

DUANE SCHROEDER: Can't put it in the record. [LB52]

SENATOR FISCHER: Correct. Good afternoon and welcome. [LB52]

DUANE SCHROEDER: (Exhibit 20) Thank you for permitting me to testify. This is a great experience where a citizen can come and talk to the senators and they listen. No matter how it turns out, it's great. [LB52]

SENATOR FISCHER: Well welcome. Welcome, it's a pleasure to have you. [LB52]

DUANE SCHROEDER: Fantastic. My name is Duane Schroeder, D-u-a-n-e, Schroeder, S-c-h-r-o-e-d-e-r. And I suppose I'm one of those high-risk people that one of the previous witnesses testified about. I'm 64-years-old; I ride a large motorcycle. I've been riding motorcycles for the last 50 years. I've been using helmets for about the last 45 years without exception. The last two years, my wife and I have gone through 14 states, covered about 36,000 miles. Every mile that motorcycle turned a wheel, we had a helmet on. Helmets work; they save lives; they reduce injuries. I am personally aware of five people, in addition to myself, that escaped serious injury because they were wearing a motorcycle helmet when they were involved in a crash. Six years ago I was involved in a crash. It was a classic case, a young inexperienced driver drove his pickup across my lane of traffic; I t-boned him at about 60 miles an hour. My motorcycle was destroyed; the pickup was destroyed, knocked the wheels off the pickup. I flew 35 feet through the air and landed on a pavement. My helmet was scarred and beat up. I never lost consciousness. My helmet did the job. Now I was totally without fault. It was the other guy's fault. I was in the right, but had I not been wearing that helmet, I would have been dead right. And I think that is what this is about. Now the proponents, I think they framed the issue properly. It's hard to debate the safety issues. The safety issue is almost indisputable. It's the philosophical issue should we require people to wear helmets or not? Now like Senator Krist, 40 years ago I too took an oath to defend the

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Constitution. I've been an attorney for the last 35 years and so the Constitution and civil rights are very important to me. But I respectfully disagree with Senator Krist's conclusion. I do not see this as a 14th Amendment issue. I am not aware of a single court that has ever ruled a helmet law unconstitutional. I assume that if that case existed, we would have heard about it. At least I'm not aware of it. I think the real issue here is, it's a philosophical issue, those that ride should decide. And on the face of it, that has a lot of appeal, it makes sense. But freedom is a two-sided coin; with freedom comes responsibility. Now if I choose to place myself in increased risk by not wearing a helmet and it's beyond dispute I do that, then I should be able to ensure the public that when I take that increased risk, if the disaster happens I don't look to the public and the taxpayers to pay for my injuries. It can't be...it can't...logically we shouldn't be inconsistent. If I'm going to be a rugged individualist, I want to...I want the freedom to choose, that's all well and good, but I had better be able to pay for everything that follows. And right now I'm aware of what happened last year; we had the debate over the insurance and the fact of the matter is, it's hard to get insurance specific to motorcycle accidents. So if we can't insure for it, then my point is, as a taxpayer I don't want to help pay for someone else's freedom. If they want the freedom, fine. But they should be able to pay for it. If LB52 passes, and you rob me of all my fun, with not letting me have my prop, I would have the ability to ride down the street wearing nothing but sunglasses. Now what do you think is going to be better? My sunglasses or that helmet when the accident happens. I submit it's a helmet. I submit this is not a constitutional issue. Those that ride can decide, but they should be able to pay for their own injuries. Thank you very much. [LB52]

SENATOR FISCHER: Thank you, Mr. Schroeder. Are there questions? I appreciate you coming in. I have a question. When you say they should have to pay for their injuries, so then I take it you're supporting the...possibly putting some kind of insurance requirement into this bill? [LB52]

DUANE SCHROEDER: I would. I mean I'm in favor of mandatory helmet laws, no ifs. I'm a fanatic about helmets. But philosophically. [LB52]

SENATOR FISCHER: How many do you have? [LB52]

DUANE SCHROEDER: Four or five. But philosophically I actually think that if an individual can demonstrate to the state that he's going to pay for his own injuries, then he should have the right to decide. I mean I think it's a foolish decision, but people have the right to make foolish decisions as long as they're the only ones affected. [LB52]

SENATOR FISCHER: Senator Janssen. [LB52]

SENATOR JANSSEN: Thank you, Chairman Fischer. I hate to take you down this line of logic. But if I choose to have a child, should I have the means to pay for it? [LB52]

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DUANE SCHROEDER: Actually you should. [LB52]

SENATOR JANSSEN: So should we mandate who can and can't by your same theory? [LB52]

DUANE SCHROEDER: Absolutely not. But what we're talking about is something a bit different. We're talking about...we're not talking about whether or not I ride a motorcycle, it's that after the accident happens, the aftermath, who pays for it? [LB52]

SENATOR JANSSEN: Well I'm same...I won't call it an accident,... [LB52]

DUANE SCHROEDER: Well sometimes it is. [LB52]

SENATOR JANSSEN: ...but the same form of logic could be said in many cases who ends up paying for children sometimes when you...so a lot of times the taxpayer is on the hook for things. [LB52]

DUANE SCHROEDER: Oh absolutely. [LB52]

SENATOR JANSSEN: And you would agree probably my analogy is much more expensive than the ones you're making with the helmet law. [LB52]

DUANE SCHROEDER: Well, but see, the thing about it is you're dealing with the 14th Amendment issue; the right to bear and have children is a fundamental right and so an entirely different issue, entirely different considerations apply. [LB52]

SENATOR JANSSEN: Well what about those who buy...well, vehicles? I mean, vehicles, obviously, again, we don't require people to have different insurance policies. We all drive...you may drive without your seat belt on, secondary offense, I'm not saying you do, but...or I may, I'll throw myself under the bus. Although I always wear mine. But we both get in a wreck, if we both can't afford to pay for it, we're not held to some higher standard like you...but we do...we do try to do it with motorcycle...and this is a new concept, and actually it's kind of the poison pill of this bill, and Senator Campbell brought it up earlier, because there's really no way. One, there's no insurance policy; two, what if somebody comes from Iowa or South Dakota without the insurance policy (inaudible). [LB52]

DUANE SCHROEDER: Oh there is a way. I have health insurance which will pay for myself; I have a nursing home insurance that will pay for me 12 years. It's expensive. A helmet costs \$75. [LB52]

SENATOR JANSSEN: So we should just let you...if you choose to ride without a helmet

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it's okay? [LB52]

DUANE SCHROEDER: No, because I'm not going to ride without a helmet. [LB52]

SENATOR JANSSEN: Well if you wanted to though since you can afford it. [LB52]

DUANE SCHROEDER: No, because it's not the law. [LB52]

SENATOR JANSSEN: But if we change the law. [LB52]

DUANE SCHROEDER: It would be lawful, it would still be...it would be the very...one of the most foolish things you can do on a motorcycle is get on it without a helmet. [LB52]

SENATOR JANSSEN: I tend to agree with you on that. [LB52]

DUANE SCHROEDER: Yeah, so; you will not catch me on a motorcycle without a helmet. [LB52]

SENATOR JANSSEN: We're on different sides of the issue, but we do agree on that. [LB52]

DUANE SCHROEDER: Um-hum. Yeah. [LB52]

SENATOR JANSSEN: Thank you very much for coming here. I appreciate it. [LB52]

DUANE SCHROEDER: And as a side, I have ridden. I've been (inaudible) this whole thing. [LB52]

SENATOR FISCHER: Senator Hadley. [LB52]

SENATOR HADLEY: Mr. Schroeder, just a quick question. [LB52]

DUANE SCHROEDER: Yes. [LB52]

SENATOR HADLEY: You said you were in an accident six years ago. Do you happen to remember what your total medical bill were for that accident? [LB52]

DUANE SCHROEDER: Yeah about...well the list price was \$50,000 and then because I had insurance, the...what my insurance company actually paid was about \$35,000. I was in the hospital...there were four surgeries, I was in the hospital for three days. But I was a long ways from dead. But there were significant injuries. [LB52]

SENATOR HADLEY: You look very alive to me, sir. [LB52]

DUANE SCHROEDER: Well some people question whether I had head injuries. [LB52]

SENATOR FISCHER: Thank you very much; appreciate you coming in today. [LB52]

DUANE SCHROEDER: Thank you, enjoyed it. [LB52]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB52]

TRAVIS GROFT: (Exhibit 21) Hello. Senator, my name is Travis Groft, T-r-a-v-i-s G-r-o-f-t and I'm representing Madonna Rehabilitation Hospital. Madonna is a free-standing rehabilitation hospital that serves persons with traumatic brain injuries including many people who have been injured in motorcycle accidents. We did serve about 500 or more individuals with traumatic brain injury last year from about 27 states. Madonna opposes the repeal of the helmet law for a number of reasons. First and foremost our opposition stems from our deep awareness of the devastating impact of traumatic brain injury and our commitment to reducing the number and severity of these injuries. The brain is a delicate organ that has the consistency of jelly. It's very easily injured in a high velocity accident and heals very slowly and very incompletely. Traumatic brain injury is a catastrophe for the person involved and his or her family. Survivors will emerge from a coma in a state of confusion and disorientation that can last for weeks. If an individual has a severe injury, it may takes months for him to relearn such basic skills as walking, dressing, and speaking. A complete recovery is rare. Even a relatively mild brain injury commonly results in a permanent loss of the ability to work and the breakup of a family. This is not an abstract matter for rehabilitation professionals. We become friends with the patients and families whose lives have been shattered by brain injury. Helmet laws can prevent enormous and unnecessary human suffering. Motorcycle helmets are safe and effective. Any legislation that reduces their use will likely have tragic consequences for many Nebraska families. As other people have mentioned, the economic consequences can also be significant. Research data shows that helmeted motorcyclists suffer fewer and less severe brain injuries, and their costs of treatment are lower. Many injured persons will be uninsured or underinsured. And we see that very commonly at Madonna. For two typical recent cases of motorcycle-related brain injury that were treated at Madonna, one individual's total cost of rehabilitation was \$198,000 and the other was \$259,000. Now this only accounts for their rehabilitation treatment. It does not include their acute hospital stay which combined with those could probably easily run half a million dollars. It also doesn't include or even begin to account for the lifetime of care often required by persons who are severely brain-injured. I'm not convinced that Nebraska is in a good position to serve an increased number of persons with brain injury if that is the result of the legislation. While advocates for Nebraskans with TBI have been working hard to increase the available resources, there are already serious and troubling gaps in Nebraska's service system for persons with this injury. Thank you very much for the

opportunity to share our viewpoint. [LB52]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you very much. Next opponent, please. Good afternoon. [LB52]

BILL SPEIGHT: Good afternoon. How are you? [LB52]

SENATOR FISCHER: Good. [LB52]

BILL SPEIGHT: Good. My name is Bill Speight, B-i-l-l S-p-e-i-g-h-t and I'm coming as a private citizen. I'm opposed to LB52. I thank you for this time. I have been riding since 1973, off-road Enduros, street bikes, as well as high-speed track bikes. I'm a retired military officer, 21 years, and retired right out at Offutt and we like Nebraska, a good place to raise a family. I've been an instructor since 1987 with 17 years off and on as an active instructor. I've taught beginners all the way through sport bike riders for the military. I believe in and have used my safety equipment several times and can attest to the importance of good equipment, particularly helmets. I've experienced losing the front end of my Ducati on the track and walked away at 80 miles per hour on the first turn over in Iowa, not a scratch, and that was because I had good equipment. Numerous times in the dirt I've tumbled and never sustained a head injury because I've had a helmet. Also just riding on the street, my noggin has been saved many times from just flying debris like rocks that have taken chunks out of my helmet. I have a friend who hit a humming bird, and so he had a humming bird stuck in the middle of his helmet all the way back, so it was quite the sight there. We took lots of pictures. I ride a full-face helmet on the street track and dirt because I think it gives you the best protection. I have three children that ride dirt bikes with me as well and they all wear full-face helmets as well and wouldn't dream of riding without one. I've ridden to, or driven to, Loudon, Hampshire, Daytona 200, Indianapolis 500, Americade Syracuse Mile, they're all races or biking events, and believe me, the object is not to spend your money getting there, it's getting to that spot and spending your money there. So, and besides that, many of motorcyclists will trailer their bikes to these different places. So whether a state has or hasn't a helmet law doesn't even fit into the equation a lot of times in my opinion. On the range, as an instructor, we rarely reach speeds of over 15 miles per hour, yet, helmets have allowed students to walk away from minor falls and to continue and finish the course at which they otherwise would not have been able to do. As an instructor, I've probably seen more low speed falls and get-offs, as we call them, than most people have. And I'll tell you what, there's a number of times the helmets have hit the pavement or hit a curb and the students have just walked away. It's been phenomenal. As an instructor I would not deem it wise for anyone to ride a motorcycle at any speed or any distance without protective gear beginning with a DOT helmet. Also, in particular, intersections; an intersection be a driveway or 4-way stop that's where a lot of accidents happen. And then you never know what's going to get you, so that's the problem. So you always want to ride prepared if you're going to go down. In my experience, helmets

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do not increase the severity of neck and head injuries, but protects; does not obstruct your vision if you look at full-face helmets. Your peripheral vision doesn't go past the holes there, the eye holes on a full-face helmet. It does not restrict your hearing. In fact, more than likely, it protects your hearing from wind and engine noise. It blocks out wind noise that makes...that masks important sounds. It is a documented fact that helmets do save lives and serious head injuries. And in my professional opinion keeping our helmet law in place would be a wise decision. It saves lives and in long term saves taxpayers' dollars. So I'd be happy to entertain any questions. [LB52]

SENATOR FISCHER: Thank you very much. Any questions? I see none. Thank you. [LB52]

BILL SPEIGHT: Thank you very much. [LB52]

SENATOR FISCHER: Next opponent, please. Good afternoon. [LB52]

GARY HAUSMANN: (Exhibit 22) Good afternoon. My name is Gary Hausmann, G-a-r-y H-a-u-s-m-a-n-n. Senator Fischer and members of the committee, my name is Gary Hausmann. I reside in Blair, Nebraska, and am representing myself in opposition of LB52. I am chief pilot for a large corporation that is headquartered in Omaha, Nebraska. I was severely injured in a motorcycle/car/SUV accident that was in no way a fault of my own. Fortunately I was a helmeted motorcycle operator. On Friday, September 1, 2006, at 2:30 p.m. on my route to my home from work after flying a corporate jet I was involved in a very serious traffic accident of which I have absolutely no recollection. As told by law enforcement officers and five adult witnesses, an SUV rear-ended a midsize car, the car had a baby on-board. They were both traveling towards me. The car was pushed into my lane of traffic when I was only 50 to 60 feet away from them with no time or distance to avoid an impact. I applied the brakes, laid the brake on its side, then jumped off as the bike was impacting the auto. As the motorcycle was launched into the air I slid under the car sustaining the following injuries: a shattered sternum; four broken ribs; a punctured and collapsed right lung; a dislocated right shoulder; two broken cervical vertebrae, C5 and C6; and the most severe injury was traumatic brain injury, specifically diagnosed as diffuse axonal injury. After being transported by life-flight helicopter to the Nebraska Medical Center in Omaha, I was placed into a medically induced coma for several days. After 15 days in the hospital I was transported to Madonna Rehabilitation Hospital here in Lincoln, Nebraska. There my wife and the staff taught me to walk and talk again, while friends and family visited and asked me the most basic questions in an effort to stimulate my brain and cognitive functioning. Eventually after 3.5 weeks at Madonna I was released to my home to continue my recovery and rehabilitation. Miraculously, I have recovered completely and am now back to flying. My medical bills totaled \$383,000 as of the day I was released from Madonna Hospital. And I was lucky. You see, according to the medical experts, the average amount of medical bills following a head injury related motorcycle accident is

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\$1.41 million. Remember now, that's the average. What do you people think my injuries and bill would have been if I had not been wearing a DOT-approved helmet? And how many motorcyclists do you think you meet each summer on Nebraska roads that do, in fact, have \$1.4 million in medical insurance or they could write a personal check for that amount. We know that all passengers are required to wear seat belts in an aircraft during takeoffs and landings, don't we? Do we consider the FAA to be imposing a violation of our personal rights? Of course not. We certainly wouldn't consider going back to the days of driving automobiles without air bags, safety glass, or padded dashes, would we? Or should we question the state's right to tell us that we are required by law to wear seat belts and utilize child-restraint seats while operating motor vehicles? You're correct. It is just commonsense to use them. It should also be required by law shouldn't it? After all, it is just commonsense. So at a time when some other states are considering reinstating their helmet laws, shouldn't Nebraska just keep theirs? Thank you for your time and consideration. [LB52]

SENATOR FISCHER: Thank you, Mr. Hausemann. Are there questions? Senator Hadley. [LB52]

SENATOR HADLEY: Senator Fischer, Mr. Hausmann, thank you. I remember you from last time. You're required to have a FAA license to fly, is that correct? [LB52]

GARY HAUSMANN: That's correct. I've got that back now. [LB52]

SENATOR HADLEY: Okay. And it requires a medical exam? [LB52]

GARY HAUSMANN: Absolutely. [LB52]

SENATOR HADLEY: I would agree. [LB52]

GARY HAUSMANN: Absolutely. [LB52]

SENATOR HADLEY: Can you tell me why the FAA should require you to have a medical exam, especially if you're just flying yourself? [LB52]

GARY HAUSMANN: Doesn't matter if you're Part 91 which is for yourself, or flying for hire, you have to have a medical exam...actually there's two parts of a license. The pilot's license, you and I can go learn to fly and we get a pilot's license, but it's not valid unless we have a medical certificate. And that's what Gary Hausmann lost in his motorcycle wreck. They didn't take my license, they took my medical certificate. Just like a person with a CDL. So the reason they require that is so that we don't hurt ourselves or somebody else should we, for example, pass out in the cockpit on takeoff or en route, so the government stipulates if we're in good enough physical or mental state to actually perform our duties. [LB52]

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SENATOR HADLEY: Okay. I just wanted to make the point. [LB52]

GARY HAUSMANN: That's more than you wanted to hear, but that's the truth. [LB52]

SENATOR HADLEY: No, but I just wanted to make the point that the government does require you,... [LB52]

GARY HAUSMANN: Absolutely, absolutely. [LB52]

SENATOR HADLEY: ...in your personal flying, if you wanted to just go out, if you had your own plane, the government can make stipulations on you flying your own plane. [LB52]

GARY HAUSMANN: Absolutely. And they can also make a stipulation that we will, in fact, fasten our seat belts, anybody in the airplane fasten their seat belts during takeoff and landing and anybody in the front of the airplane has it on the entire time the airplane is in flight. [LB52]

SENATOR HADLEY: Thank you. [LB52]

GARY HAUSMANN: And that's Federal Aviation Regulation 91, Part .107, I happen to know that one. [LB52]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Louden. [LB52]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, as I looked at your testimony, Gary, and I was quite intrigued with the part when you talked about what we have to do with cars nowadays. [LB52]

GARY HAUSMANN: Exactly. [LB52]

SENATOR LOUDEN: Those safety features, when you talked about padded dashes, and all of that, because I drove cars long before they had that. But what I would maybe point out when we're talking about what's our rights or not, every time the federal government has come in and told us what we had to put on that car, we had to pay for it. [LB52]

GARY HAUSMANN: That's correct. [LB52]

SENATOR LOUDEN: And there was collapsible steering wheels is one of the biggest things that saved thousand of lives. [LB52]

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GARY HAUSMANN: Airbags. [LB52]

SENATOR HADLEY: Long before air bags or anything else, because those old cars had that steel shaft that went from this far in front of your chest down to the front axle and if you hit head-on why that whole thing came back. I've seen accidents like that. So I'm wondering, you know, sure we require helmets as a safety feature. We require that you spend the extra money to put collapsible steering wheel in your car. You spend the extra money to put the air bags and all of that is regulations that we have to do, so I'm wondering what... [LB52]

GARY HAUSMANN: It's part of the game. [LB52]

SENATOR LOUDEN: Is there any difference in the regulation where I have to wear a helmet than it would be to have a car that had your collapsible steering wheel? [LB52]

GARY HAUSMANN: It should be part of the program, shouldn't it? [LB52]

SENATOR LOUDEN: Well, I think so. [LB52]

GARY HAUSMANN: Yeah. [LB52]

SENATOR HADLEY: Thanks for your testimony. [LB52]

GARY HAUSMANN: Thank you. [LB52]

SENATOR FISCHER: Any other questions? I see none. Thank you very much. [LB52]

GARY HAUSMANN: Thank you very much. [LB52]

SENATOR FISCHER: Next opponent, please. And could I have a show of hands of how many more opponents wish to testify? I see one, two, three more. Okay. Good afternoon. [LB52]

PATRICK LANGE: How do you do, Senator. Senators, my name is Patrick Lange, P-a-t-r-i-c-k L-a-n-g-e. And I'm here today to implore you not to vote in favor of LB52. At one time I was an advocate to the helmet law being abolished. But the choice not to wear a helmet takes a toll on many people, especially in the case of the unforeseen. It affects the lives of a lot more people than just the rider. It affects their friends and family especially. Last year my wife and I took our honeymoon on our motorcycle in South Dakota where the helmet law is not required. So we weren't wearing them. On our way home the rear tire sidewall gave out. My wife was thrown off and landed on her head causing her to pass away instantaneously. I was diagnosed with a severe traumatic

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brain injury and multiple broken bones including four broken ribs, a punctured lung, a broken clavicle, and of course the broken skull from my brain injury and I was not expected to live. My children not only had to watch their father struggle on the edge of life and death, but had to attend the funeral of their mother while wondering if dad was going to make it. Along with the physical and mental damage it has done, it is very financially damaging. In the four months I was in the hospital, my medical bills amounted to over \$1.6 million. And that's not accounting for the time that my parents and friends missed going to work and the expenses of coming up to see me and staying up there with me. The trauma that has caused myself and my family is indescribable. I want to ask you to please do not vote in favor of LB52. Do not allow another unforeseen injury to wreck havoc on another undeserving family. Every day I have to live with the wonder of "what if." What if my wife and I had had our helmets on? Would she still be here with me today? Would my kids have had to go to her funeral? Would they have had to sit and watch their daddy and wonder if he was going to die? Please don't let another family live with the "what if" aspect of life. They don't deserve it. Those kids don't deserve it. The friends and family don't deserve it. The moms and dads don't deserve it. I thank you for your time in allowing me to speak to you today. I'll take any questions that you have. [LB52]

SENATOR FISCHER: Thank you, Mr. Lange. And on behalf of the committee, we extend to you our deepest condolences. So very sorry for your loss. [LB52]

PATRICK LANGE: Thank you. [LB52]

SENATOR FISCHER: Any questions? I see none. Thank you for coming in today. Next opponent, please. Good afternoon. [LB52]

ROSE WHITE: (Exhibit 15, Exhibit 16) Good afternoon. Thank you, Senator Fischer and members of the committee. My name is Rose White, R-o-s-e W-h-i-t-e and I'm the traffic safety director for AAA Nebraska. Now earlier I had the clerk hand out to you a yellow booklet that looks like this. Basically what this includes is a lot of statistical data about Nebraska motorcycle fatalities and injuries. It was gathered from the Nebraska Department of Motor Vehicles and Office of Highway Safety. And it has in there a lot of information on questions that you had asked earlier including information about the training program, percentage of motorcyclists who are DWI at the time of a crash, and that type of information. I know this is a very detailed issue to study, and so I hope this information will be helpful to you. One of the reasons that I wanted to be here today is to graciously thank you. Thank you and your predecessors for passing very effective legislation that has led Nebraska to where it is today. This last year we basically claimed that we had the lowest highway fatality injuries and fatalities on record since 1944. And we got this record in spite of our registration of motor vehicles in Nebraska quadrupling since that time. So this is an extremely impressive record that could not have been attained without many things including safer highways, safer vehicles, better trained

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drivers, but most importantly effective legislation. And so I want to thank you for passing the motorcycle helmet bill back in 1989. And I thank your predecessors for helping us to keep the bill. And I'm asking you here today to help us keep this law intact. Now there's many economic benefits to having a motorcycle helmet law that you might not have thought of. As an example, registration of motorcycles back in 1989 when we enacted a helmet law, we had 23,560 motorcycles registered in our state at that time; today we have 54,697. So we have more than doubled the number of motorcycles since that time. And in spite of that we have just a very impressive fatality/injury rate record. And in addition to that, we have to keep in mind the economic impact of the sales of motorcycles. In fact, if we estimate that each one that was sold for about \$10,000, that difference would basically amount to about \$311 million. And so great sales revenue for the state of Nebraska and the tax of 7 percent collected on that difference, that variance, exceeds \$21 million. And so certainly having a helmet law in Nebraska has helped us in many ways. But the one big factor that unfortunately we can't measure just because we don't have access to privacy records and issues and so forth associated with healthcare issues, we can't judge or estimate even the healthcare cost savings that our state has incurred since passing this law. That basically is priceless. And so as you heard from some of the speakers here today talking about their cases, we know how expensive this could be just for one case. In fact, one of the items I distributed out to the clerk earlier is a report called the Status Report and you have that in front of you. And this is an older edition, a couple of years old, but the reason I put that on your desk is because it basically focuses in on a Nebraska situation. There is a young man in Illinois who was involved in a crash; did not wear his helmet and his family could not find any facilities in Illinois who could take on his case so he ended up coming here to Nebraska. But it talks about the pain that that family incurred and the costs associated with that. But that's just one example. Again, I want to thank you for being fiscally prudent and passing effective legislation and certainly we hope that that continues with you keeping our helmet bill in tact. So please vote no on LB52. Thank you. [LB52]

SENATOR FISCHER: Thank you, Miss White, it's always nice to see you. Senator Hadley. [LB52]

SENATOR HADLEY: Senator Fischer, thank you. Miss White, I noticed that...I don't have the number, 27 states have a partial helmet law. What's the rationale between saying if you're under 21 you have to wear a helmet and if you're 21 or over...does it change the injury if you're young or old? [LB52]

ROSE WHITE: Senator Hadley, that's one great question that I don't understand, because even if we looked at here in Nebraska, if we passed that law, it would only impact fewer than 2 percent of the current motorcycle licensed drivers in Nebraska right now. And so to me it just does not make sense whatsoever. [LB52]

SENATOR HADLEY: Okay. Thank you. [LB52]

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SENATOR FISCHER: Other questions? I see none. Thank you, again, for coming.
[LB52]

ROSE WHITE: Thank you. [LB52]

SENATOR FISCHER: Next opponent, please. I believe this is the last opponent. One more, okay. And do we have anyone that is going to testify in the neutral capacity? I see none. So we have one more testifier after this. I'm saying that so Senator Krist's office can keep up with us here. Good afternoon. [LB52]

BILL MULHERIN: (Exhibit 23) Good afternoon, Senator Fischer, and members of the committee, my name is Bill Mulherin, M-u-l-h-e-r-i-n and I'm here today representing the National Safety Council, Greater Omaha Chapter in opposition to LB52. So once again here we are at the great motorcycle helmet debate. Once again we're asking you to end that debate here, at least for this year at the committee level. We've heard the facts, state after state that has repealed their helmet law has seen fatalities skyrocket while usage rates drop and unfortunately we all pay. Facts about helmets effectiveness is there. I think we all get this; they just work; they're simple and they work. Now we as...this was brought up as a 14th Amendment issue and I kind of want to address that. The 14th Amendment is equal protection under the laws. But before we get to the 14th Amendment, we have the regular Constitution which places the power of the police, it's not a law enforcement per se, but police power, the power to create laws to protect the citizens of the state, all the citizens squarely in the hand of the state legislatures and here we are talking about that. Now we as safety advocates we feel the compelling tug of freedom from undue government burden. Nobody is for more government. I'm certainly not. And many of us, myself included, know and feel that tug of freedom, the freedom of the road, the freedom of the ride. I ride myself; I'm an instructor. But we as safety advocates know too well the risks involved. And we've had a chance to really research and weigh them. And we see the uninformed choices that the regular rider makes and we've seen some of that testimony here today. People saying I wish I had known better. We also know that people make choices based on how they feel about things; how they perceive things in the safety realm. And you don't have to go any further than to poll your friends about what are they more afraid of flying overseas or driving to the airport. They'll tell you, I'm afraid to fly overseas. But the statistics show that it's much more dangerous to drive to the airport. We can see the decision-making process in action. So we urge you to make...take your constitutional power and make the right decision. It's not necessarily going to be the most popular decision to realize that keeping this law is going to be unpopular amongst some of the riding brethren I have who are still here and some of whom have left, some of whom may even be members of this esteemed body. But we encourage you to make the right decision, not necessarily the popular one. As safety advocates we also are charged with speaking for the dead and for those who have not yet had their accident, but we attempt to give voice

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to those who would say "if only." If only I had known the risks. If only my state had passed or kept their law. If only I had really been able to understand what was at stake. Repeal this law will save many riders from saying: if only, if only they could. If it's statistics that's going to drive the decision, they're there, you've seen them. I've included a couple of things in the packet here; one from...they repealed the Pennsylvania law. And one kind of interesting, a Web site I found; the history of, and I put in the history of motorcycle laws and you have the URL on top of it there. And here's a guy that just wrote this up and even in his opinion, he's not a writer, does not have a dog in this fight, and even he is saying; hey, this is crazy, wear your helmets. If it is a sense of duty to all the persons in the state, I urge you to visit the Madonna center and talk to some of the people that are there, because they will tell you the same thing. Hey, if only I had an opportunity to make it. If it is a sense of money, the facts are clear. Yeah, there will be a few more people riding through the state, but the reality of it is is that how much money do we have to pay out in Medicaid to oversee that. In Nebraska our statistics have shown a decided dip in motorcycle fatalities back in '89 which is the year we enacted our helmet law. And now even though registrations are a record numbers, our fatality rate remains low compared to states without helmet laws. So for all those reasons we urge you to please keep this bill in committee this year. Thank you. [LB52]

SENATOR FISCHER: Thank you, Bill. Are there questions? Senator Price. [LB52]

SENATOR PRICE: Thank you, Senator Fischer. Thank you, Mr. Mulherin, for coming to testify today. Let me ask you this question, of the states that don't have mandatory helmet laws, how many have ongoing efforts to change that legislation? [LB52]

BILL MULHERIN: You know, I know right now Pennsylvania is working to repeal it...or to reinstate it. Others...there's a foot...there's a movement afoot in Michigan to reinstate their law. Excuse me, did I say repeal? I meant (inaudible) repeal it. They want to bring it back. Michigan wants to bring it back. Last year in Missouri the Legislature voted it out, the Governor vetoed it, they wanted to keep it. I think what you see if you look at the numbers, we've what, 1.7 million people, 1.5 million licensed drivers, 54,000 registered motorcyclists, I own three of them. And ABATE's membership was a thousand. I think the number of drivers and passengers affected in this state is huge compared to the number of people who are coming out and saying, hey, repeal this law. And they're not always vocal about it. They're not here. They're not taking the time off from work to come down here and to let this committee know. It will happen afterwards. It will happen when the soccer mom runs a stop sign, hits a motorcyclist who would have had some broken bones, but now faces a felony motor vehicle homicide charge because she killed the motorcyclist because he wasn't wearing a helmet. That's when we will start to see some of the public outcry in Nebraska. And I think that you'll see a grassroots movement to reinstate our repeal once the true effects of helmet law repeal come into effect, if in fact, this committee does that and the floor does that. [LB52]

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SENATOR PRICE: Thank you. [LB52]

SENATOR FISCHER: Other questions? I see none. Thank you for coming in. [LB52]

BILL MULHERIN: Thank you for your time today. [LB52]

SENATOR FISCHER: Thank you. Last opponent, please. I would like to let Senator Pankonin's office know, after Senator Krist closes, we will be taking a five minute break. Good afternoon and welcome. [LB52]

KAREN LANGE: Senator Fischer, my name is Karen Lange, K-a-r-e-n L-a-n-g-e. I am the mom speaking before you. I'm Patrick's mom. Our family went through from totally excited to be receiving Whitney into our family. She felt like she had always been a part of our family and then six days later our lives were destroyed. I've heard, you know, laws can sound like they're such unimportant things or generic. Laws are about people. I spent the time with Pat. Pat was in a coma for almost 50 days. I was in the hospital with him constantly. I lived in the waiting room and I lived out of the trunk of my car; spending 16 to 18 hours a day with him, reading to him, praying to him, singing to him, anything. I've heard insurance spoken about. Let me tell you about insurance. For one thing, if you're in an accident like this and your spouse is killed or you don't have a spouse, you have nobody to make decisions for you. So not only are we dealing with the death of our daughter-in-law, the imminent death of our son, we're on the phone, and he's 7.5 hours from home in South Dakota, with our attorney trying to get permission to talk to his insurance company to deal with his children. Stress, three days after the accident, my husband had a heart attack and he was in coronary ICU on second floor and Patrick was in traumatic brain injury care on third floor. The stress on a family is beyond what you can imagine. Our grandchildren, 12 days after the accident, we were told we needed to bring our grandchildren up so they could say goodbye to their dad. That was just a few days after our daughter-in-law's funeral. Insurance companies, \$1.7 million, I'm responsible for figuring them out. Do you know, even if you have insurance, the insurance company doesn't have to pay unless the hospital calls you numerous times and says, please call the insurance company and ask them to rerun these tags. Is that my responsibility? The premium has been paid. And so trying to deal with Pat's situation; my husband taking off work; I'm a nurse; and I took off 3.5 months of FMLA time. The lost revenue to our own family, our income, our...my husband having the heart attack, the bills that we incurred there, I cannot begin to tell you how awful it is. And like Pat told you, we constantly ask ourselves what would have been different if they would have been wearing helmets. Yes, was it a comfort that the investigator could tell me on the phone, your son did everything right. He did everything perfectly right that you should do in that situation. Insurance companies started out...they did not even pay enough of the bill for his critical care to pay for his medication. That's how many...we had to constantly go back to insurance. We couldn't make his house payment. At this point, Pat, as you can see, is doing awesome. Twelve

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days they told us that if they didn't do a craniectomy he would die, no questions. If they did one, he would be a vegetable the rest of his life. He doesn't qualify for disability because he's too healthy for disability they tell us. But he's not healthy enough to go back to work even though he's had a job since he was 13. So financial stress, we have property taxes we haven't paid because Pat is our first priority and his children. We are currently paying most of his utilities and his house payment, because see, he has had his house for ten years that he's been paying payments on. There's no way to express to you, there's no way to express to you the stress, the fears, the love, the lack of time to grieve because "if only." [LB52]

SENATOR FISCHER: Thank you, Mrs. Lange. And again,... [LB52]

KAREN LANGE: Do any of you have any questions? [LB52]

SENATOR FISCHER: ...I express to you our deepest sympathies on the loss of your daughter-in-law. Thank you for coming in. [LB52]

KAREN LANGE: Thank you. [LB52]

SENATOR FISCHER: Are there questions? I see none. Thank you very much. Any other opponents, please? Anyone wishing to testify in the neutral capacity? I see none. Senator Krist, would you like to close, please. [LB52]

SENATOR KRIST: I would, thank you. When I brought this before you, it was at...not without a great deal of thought about the kinds of things that you've heard in opposition. Accidents happen; people have accidents and they are killed, and things are devastating and families have to come together and I understand and I am deeply sympathetic and empathic as well. I've had those things happen myself. I lost a friend to a decapitation as a result of a motorcycle accident and his helmet held everything together. I lost a friend to a brain injury from a motorcycle accident and had he not had the helmet on...he did have his helmet on, had he not had his helmet on, I'm sure that he still...there would have been no difference. I know that the statistics can say many things and you've heard on both sides today those statistics. This group, save one, has heard this argument before. I know you will do what you need to do to vote this out of committee or not. But I owed it to the people who brought it to me as an issue to bring it forward as a choice issue. I brought it forward and I hope and pray that we will do the right thing. And I also hope that we will have an opportunity to address this in the body. Thank you for your time and your dedication and your service. [LB52]

SENATOR FISCHER: Thank you, Senator Krist. With that I will close the hearing on LB52 and we will take a break until 4:05. (See also Exhibit 1, Bruce Rieker, Nebraska Hospital Association; Exhibit 2, Laurie Klosterboer, Nebraska Safety Council; Exhibit 3, Judith Lee Stone, Advocates for Highway and Auto Safety; Exhibit 5, Gerald Stilmock,

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Nebraska State Volunteer Firefighter's Association; Exhibit 6, Judith Halstead, Lincoln-Lancaster County Health Department; Exhibit 7, Laura Neece-Baltarro, Epilepsy Foundation; Exhibit 8, Kate Kulesher Jarecke, Brain Injury Association of Nebraska; Exhibit 9, Debra Larson, State Farm Insurance; Exhibit 10, David Halen, self; Exhibit 12, John Roberts, Nebraska Rural Health Association; Exhibit 13, Bonnie Shearer, Nebraska Academy of Physician Assistants; Exhibit 19, Bradley Meurrens, Nebraska Advocacy Services, Inc.; Exhibit 26, Gary Westerman, Nebraska State Board of Health; Exhibit 27, Julie Stahla, ARC of Nebraska; Exhibit 28, signatures in support and opposition to LB52; Exhibit 29, signature in support of LB52. [LB52]

BREAK

SENATOR FISCHER: Welcome back to the Transportation and Telecommunications Committee. Senator Pankonin is here so I would like to open the hearing on LB495 and welcome Senator Pankonin. [LB495]

SENATOR PANKONIN: Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. I'm Dave Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LB495. This bill would create the Boat Dealers Licensing Act for the state of Nebraska. As some of you may remember, the need to add the provisions in LB495 to our state laws was prompted by information brought to me by Cathy Brink, a boat dealer and marina owner in my district, who is here with us today. Cathy contacted me to describe the difficulties that she and her husband face when they try to operate their business in a professional manner. The first step taken to address the Brink's concerns was entered into action last year of LR419 to study the need for licensing of boat dealers in Nebraska. Currently, Nebraska does not require boat dealers to be licensed. Unlike other states that have statutory licensing requirements which must be met by persons who wish to operate as boat dealers, Nebraska does not. Legitimate boat dealers in this state, like the Brinks, face challenges which can be both costly and inconvenient. When doing business with customers from other states or attending boat auctions, they're often delayed or prevented from closing sales because they do not have a dealer license. Cathy contacted my office to ask if this situation could be changed. She noted the irony of the state's requirements that their business and others like it be licensed to sell alcohol and fish bait, specifically minnows, but not to sell motor boats and personal watercraft. This committee held a hearing on LR419 last September. At the hearing, Bill Jackson, director of the state's Motor Vehicle Industry Licensing Board testified about the board's role in providing administrative oversight for the motor vehicle industry and its willingness to perform similar duties to carry out the provisions of a new licensing process for boat dealers. The second step to craft a licensing process for boat dealers involved collaboration with Mr. Jackson and Loy Todd from the Nebraska New Car and Truck Dealers Association in consultation with committee counsel, Dusty Vaughan, and boat dealer, Cathy Brink. Using the Motor Vehicle Industry Licensing Act as a model,

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Mr. Jackson, Mr. Todd and my office outlined the basic provisions of a new boat dealer licensing process. The committee counsel reviewed the initial plan and Cathy Brink recommended modifications to reflect the differences between the motor vehicle industry and the existing business practices of Nebraska boat dealers which are often determined by manufacturers requirements. The introduction of LB495 was the third step in this creation of a potential new licensing process for Nebraska's boat dealers. The bill would create a more professional business model for legitimate boat dealers in the state, enable Nebraska boat dealers to operate on a more level playing field when they do business in other states where licensing is already required. Improve consumer protection through statutory requirements for boat dealers, investigation of consumer complaints and penalties for dealers who do not comply with the provisions of the Boat Dealers Licensing Act. Increase accountability between Nebraska's boat dealers and the state of Nebraska and finally provide administrative oversight of the new licensing requirements by an existing organization with little, if any, cost to anyone except boat dealers who want to do business in Nebraska. The Motor Vehicle Industry Licensing Board would expand by one member to include a representative for Nebraska's boat dealers. I think you'll see in a fiscal note that...should be with your materials, that this is...according to fiscal note, should be revenue neutral. In preparation for the interim study on this issue last year, the Legislative Research Office confirmed that Iowa, Kansas, Missouri, South Dakota, and Wyoming all require licensing of boat dealers in their respective states. Similar information was sought from Colorado, but was not obtained. I believe it is time for Nebraska to join its neighboring states by creating a licensing process for its boat dealers. LB495 could provide a way to achieve this goal. I would be happy to answer your questions, but there will be testifiers who might be better able to answer specific questions. And Cathy Brink from my district will be one of those testifiers. Thank you. [LB495]

SENATOR FISCHER: Thank you, Senator Pankonin. Are there questions? Senator Louden. [LB495]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Senator Pankonin, as I looked this over, this is just for motor boats and motor propelled watercraft, is that not? [LB495]

SENATOR PANKONIN: Yes. [LB495]

SENATOR LOUDEN: I haven't seen anything in here about sailboats and some of those sailboats are quite expensive, should that have...should sailboats be entered into this bill too? Or do you think there's that much of a problem out there somebody buys a sailboat and don't...just get by for the \$400 or even...do they have to have a dealers license to sell a sailboat? [LB495]

SENATOR PANKONIN: Senator Louden, I think that's a good question. I think that's the...we're in a start of a process here with this legislation. This is new territory for our

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state in licensing. Obviously we know now that other states have it. We know there are some problems, I think you're going to hear about it from testifiers and we're very open to all those suggestions and comments and I think that's a great question. That's why we're going through this hearing. And as I've told the people, specifically Mrs. Brink and another boat dealer that are here, this could very well be a two-year process. We get the bill presented, it's out there, and as we go through we may even want to look at what these other states actually do have. This starts the process. That's one of the questions that will have to be answered. You're exactly right. [LB495]

SENATOR LOUDEN: Okay, thank you. [LB495]

SENATOR FISCHER: Thank you, Senator Louden. Senator Dubas. [LB495]

SENATOR DUBAS: Thank you, Senator Fischer. Senator Pankonin, as a new member of the Transportation Committee I wasn't involved with the interim study, but...and I think you already alluded to the question I'm going to ask is, did you look at what other states have in place and is this process comparable to what they have in place? [LB495]

SENATOR PANKONIN: In general we did, but not specifically. I think from the hearing this summer and like my testimony said, Bill Jackson from the Motor Vehicle Licensing had been there, Loy Todd had been involved, and so we use that as a model, but whether that's going overboard. Although it's pretty similar, we got consumers involved and vehicles with engines and things like that, but we're going to be open to that. I think in the scheme of things with Dusty Vaughan's work and whatever we...we did most...my office did much of the work on this, I think that's a fair statement, isn't it Dusty? Yeah. But as we move ahead, I think we're open to all these suggestions to see that we can have a workable model. I think we do need something and I think you'll hear about that from some of these testifiers about when you have, basically, no regulation, there can be problems. But I think we want to be careful as we craft something. And one of the things that we've had as a little bit of a difficulty is that these boat dealers do not have an association like people of the motor vehicle industry or the farm equipment industry, which I'm familiar with. So we haven't been able to talk to an organization that represents everyone. We've been talking to individuals. And that's made it a little more difficult too to get that feedback that as you well know, to craft good legislation helps to have that industry involved. So this is a start of a process, in my opinion. [LB495]

SENATOR DUBAS: Thank you very much. [LB495]

SENATOR FISCHER: Thank you, Senator Dubas. Other questions? Senator Hadley. [LB495]

SENATOR HADLEY: Senator Fischer, Senator Pankonin, I guess as a question or a statement, the Transportation and Telecommunications Committee is always kind of

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interesting because we go from one industry that doesn't want to be regulated to another industry that wants to. So that's an interesting dynamic in our committee because here, you know, a couple days ago we had a group that didn't want no government oversight whatsoever and now we have a group coming in and saying...so that's an interesting dynamic. [LB495]

SENATOR PANKONIN: Yeah, well, and I appreciate that comment, Senator Hadley, and I think you'll find the testimony behind me to be interesting from that standpoint, some of the problems they have had. As I know most of you here in this committee, I think we want a sensible approach to this. We want to try to correct some of the problems, but without overdoing it and so I...I think we're all going to come to that, hopefully, that kind of agreement over time here. [LB495]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Thank you, Senator Pankonin. First proponent, please. Could I have a show of hands of all the proponents that would like to speak? Four. Any opponents? I see none. Okay, first proponent, please. Good afternoon. [LB495]

CATHY BRINK: Good afternoon, Chairman Fischer, members of the committee. My name is Cathy C-a-t-h-y Brink B-r-i-n-k. I'm here today, my husband and I, we own and operate Beaver Lake Marina in Cass County just south of Plattsmouth, and we've owned it for 9.5 years. When we bought the marina, we applied for everything we thought we needed to run our business; our sales tax permit, our federal ID number are all the things we needed. We researched, we looked for some type of a permit to sell boats and we couldn't find it. And we kept looking, we kept thinking, well, we have to be missing something here. I kept researching. I would call and low and behold nothing. So we went on about our business; we said, well, I guess we don't need one to do that. So we went on about our business. As our business expanded, we sold more boats, we kept seeing little problems arise. We would send titling paperwork in; county clerks would return it to us and say you forgot to put your dealer number on that title. So I'd call them up and I'd say I don't have a dealer number. Well, you have to have one. No, Nebraska doesn't license boat dealers. So once I convinced them, then I'd turn around and send it back to them; put a note on it that said I spoke to this person, make sure they know, and then we'd go on and get the boats titled. But one of the problems with that, while it's inconvenient for me, for the customer if they happen to be getting close to their 30 days to get that boat titled, it can push them kind of close to that deadline and then they're at penalty for not having that boat titled within 30 days. So it also has an effect on the consumer. And sometimes that 30 days can come into play if the financing takes awhile to get me funded so that I can send the title, sometimes you can be pushing pretty close to that 30 days and then you take a week out of that to send the title back and send it back again and then have them process it, it can really push that number a little bit. In other states, it's not as easy to convince them because it's not like they can just say, oh yeah, you're right, now I remember, we don't, go ahead and send it

again. And the title document that is used for a boat is the same title document that is used for a car so it has a field on it that says dealer number. So I have to explain to them, if I were a car dealer, yes, I'd have a number that I could put there, but because I'm a boat dealer, I don't and I am legitimately entitled to transfer that title without it being in my name. One of the other problems that we've run into is we wanted to sign up for an auction so that we could purchase auction boats that were turned in. Again, they require a dealer number. And we were told you can't without a dealer number. And after we did some talking, then they sent us a packet of paperwork about an inch thick to verify your identify and that you're a legitimate business and all of this to be able to sign up for an auction to be able to purchase the used boats at auction. One of the other things that we've seen is consumers utilizing a dealer-boat registration for their personal boats. A dealer-boat registration is a generic registration intended for boat dealers to be able to demo and test drive boats. But it's not limited to a boat dealer because there isn't any way to identify a real boat dealer. So any consumer can walk in and say, I want dealer registration for my boat and they get a generic registration. They can use that registration on any boat they want. It doesn't identify a boat, it just identifies a person and says here's your numbers, you can use this on any boat you want. The reason they do that is because then you don't have to pay sales tax on that boat that you purchased if you use that type of registration on your boat, there's no sales tax. So it gives them an around for paying their rightfully owed sales tax. Some of the other reasons that I'm in favor and that I had brought this to Senator Pankonin is it would level the playing field for the dealers that really are in business, have invested in the training of their employees, are carrying insurance, are collecting sales tax and submitting it to the state. Currently a person can talk to a manufacturer and say, I'll buy four boats and that manufacturer is going to say, wow, I can get four more boats sold and they will sell them those boats. They may sell them to their neighbors, their friends, they'll say, if I can sell three, I get one at cost. But there's nobody to come back to for warranty or service on that boat. They're selling them out of their barn or their garage...or something goes wrong, all they have to do is throw away their cell phone and get a new one and that person can't be found to follow up on. My husband's favorite quote is: just because they have a magic marker to make a sign and a cell phone doesn't make them a legitimate business. But because there's no oversight, apparently it works that way. One of the other things that...why I agree with this, is because not only does it provide protections for the consumer, it makes sure that I'm going to be here to, you know, service that boat and that I'm adequately set up and that I will be there tomorrow when/if something does go wrong. But it protects me as well from somebody just saying I'm going to sell that boat and then when things go wrong, if it has Mercury on it and that person can't be found, guess who they're coming to to do the warranty. Well, warranty work isn't something we love to do. It doesn't pay as well as retail work; we do it because it's a service to our customers. We sell the boats, we know we're going to provide warranty service, but those people that aren't providing that warranty service for the products they sell, they're using the legitimate dealers to do that for them. So I reviewed the bill as it's written. I won't say it's perfect, there are a few things that we might like to have

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added, changed, but I think as an overall it's a very good start. And I personally don't see where if a person is a legitimate business and they're operating professionally and they're doing the things that they should do as a legitimate business, or they should have any real opposition to being regulated like this. It's an expense, you know, a couple hundred dollars in the scheme of things is nothing compared to how many times I have to sit there and re-mail titles or be on the phone with somebody to explain this. So thank you for hearing me and I'd be happy to answer any questions if you have any. [LB495]

SENATOR FISCHER: Thank you. Thank you very much, Mrs. Brink. Questions? Senator Hadley. [LB495]

SENATOR HADLEY: Senator Fischer. Cathy, thank you for coming. Just a quick question. If you sell a trailer along with the boat, is that considered a separate sale and is there a title that goes with the trailer or is that? [LB495]

CATHY BRINK: There can be. Nebraska doesn't title trailers, they register trailers. You can title a trailer if you wish to have a title for it. And it is kind of separate...it's got its own separate sales tax form, so we do have to do some extra paperwork along with that title, but yes, we transfer ownership on trailers as well. [LB495]

SENATOR HADLEY: And it's separate from the boat. And what we're dealing with here is just basically the boat sales and registry as a boat dealer, not a trailer dealer. [LB495]

CATHY BRINK: Yes, the...when I sell a boat and a trailer, it goes on one sales form, but I have to do two sets of sales tax forms because it's two different licensing processes at the court house. [LB495]

SENATOR HADLEY: Okay. Thank you. [LB495]

CATHY BRINK: So, and trailers might be something that may need to be incorporated... [LB495]

SENATOR HADLEY: I was going to say, if we're looking through things, just maybe... [LB495]

CATHY BRINK: ...into this to cover that because they're kind of a motor vehicle side of things. [LB495]

SENATOR FISCHER: Thank you. Other questions? Senator Louden. [LB495]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. I was wondering on...and I understand we got to have some kind of control, how do we handle this at the local

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hardware store that sells these, what, rowboats that will hold about 600 pounds or something like that. I mean, they're not that big of boat. Sometimes they have some kind of motor on them, most the time they run with oars, how would we handle that in there? Would he have to have a boat dealers license under this scenario? [LB495]

CATHY BRINK: I personally, in my own opinion, I feel like if it's a watercraft that's being titled, then they should have a permit to sell that. [LB495]

SENATOR LOUDEN: Are those little boats titled? [LB495]

CATHY BRINK: Some of them are. Yes, they have a VIN number. [LB495]

SENATOR LOUDEN: You got to get that Nebraska stamp on the side of them in order to use them on the water, but I didn't know if they... [LB495]

CATHY BRINK: Yes, typically they have a VIN number on them. I think most people don't title like a little peddle boat, the little plastic ones that some places sell, but if...I personally feel like if it's a "titleable" type of a watercraft, it should fall under this legislation as well. [LB495]

SENATOR LOUDEN: Okay, thank you. [LB495]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you very much for coming in today. [LB495]

CATHY BRINK: Thank you. [LB495]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB495]

PAUL DAVIS: Good afternoon. Good afternoon, Chairman Fischer and members of the Transportation and Telecommunications Committee. My name is Paul Davis, P-a-u-l D-a-v-i-s, and I represent Omaha Marine Center in Omaha, Nebraska. In reviewing the bill and actually the details were just sent to me about two, two and a half, three weeks ago through the Senator's secretary. And we feel too that fundamentally the bill is of a good idea. There are a few concerns as it is written right now that I would address, but for our experience and time in titling boats at this point in time, we've had to go out and actually go through the process of getting an auto dealer license because of all of the conflicts that we've faced. The courthouses even in Douglas County, as well as Sarpy County and the surrounding areas do not seem educated on the law or that boat dealers do not have a license number. So by getting an auto license number, that alleviated a lot of our time and concerns. It also allowed us to go to the auctions as well. We buy and sell boats through the auto auctions which is actually become an entity of our business. The one concern that I have with the bill as it's written currently is that the

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Motor Vehicle Industry Licensing Board only having one boat dealer on as a representative, in my experience of over 40 years in the industry today, I've seen several auto dealers go into the marine industry and have not had any successful results with them being any type of long-term boat dealers. So that is a small concern of mine. The other thing that we face too with the illegitimate boat dealers we've seen over the course of our dealership, I've seen over 20-plus dealers come and go and with good intentions, but nothing as far as experience or follow through as a marine dealer. The bill also does not state anything about the required technicians needed as well. This would be, for an example of what I use, this would be like opening a new hospital and not having any doctors because the name on the building may say hospital most consumers would assume that there was qualified staff and experts within the facility. The negative effect of not having any qualified specialists in our situation, technicians has proven to be not safe and have very dangerous consequences. The examples that I have in these dealers that have come and gone either rigging a boat, getting a boat ready, trailers, things like that, without the experience had detrimental consequences to our industry, as well as the consumers experience. And then, thus, then they get out of boating. With the complexity of the boats today, our backyard mechanics are unable to keep up with the issues, updates, or proper procedures on repairing and fixing the product. I feel that the bill, LB495, addresses a majority of the issues and feel that it is worth pursuing or going forward with. [LB495]

SENATOR FISCHER: Thank you very much, Mr. Davis. Did I understand you correctly that you would like to see the government tell you how many technicians you are required to have? [LB495]

PAUL DAVIS: No, my thoughts are on looking at other industries simply having someone there who can...that has some type of technical background. Honestly, I don't have a solution to that, but the disadvantage is that for the last four dealers that have gone by the wayside in the last two years, they left residual effects on not properly putting on tires on the trailer, putting a prop on a boat, putting a plug where it belongs in the motor. So, it's created these issues of unsafe boating situations. When we go and touch the boat, then it creates this who's fault is it scenario. I don't have a solution, but it's something that I feel could be addressed. [LB495]

SENATOR FISCHER: Okay, thank you for bringing that up. Other questions? I see none. Thank you for coming in today. [LB495]

PAUL DAVIS: Thank you. [LB495]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB495]

WILLIAM JACKSON: Good afternoon, Senator. Members of the Transportation Committee, my name is William Jackson, W-i-l-l-i-a-m J-a-c-k-s-o-n. I'm the executive

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director with the Motor Vehicle Industry Licensing Board for the beautiful state of Nebraska. I sit here as a, kind of a, supporter; I actually don't have a big dog in the fight, but we're willing to take this on if the Legislature so deems this necessary. We do have the expertise of the title, bills of sale, consumer complaints, and such and so forth. We have the people in the field that are...have that expertise and we could do this, I believe with not having to hire anymore staff. I believe the revenue that we would take in would probably be enough to handle what we would have to do as far as computer technology and maybe some more travel and some things like that. Again, we're willing to take this on. The bill as written, as they said, there's some things that I would probably see changed or added, but it is a good base to start with from what I can see. I'm here more to answer any questions that the committee may have. So I'm at your disposal. [LB495]

SENATOR FISCHER: Okay, thank you, Mr. Jackson. Any questions? I see none. Thank you for coming in. I'm sure we will be in touch. [LB495]

WILLIAM JACKSON: Yeah, I'm sure you will be. [LB495]

SENATOR FISCHER: Good afternoon. [LB495]

LARRY DIX: Good afternoon, Senator Fischer, members of the committee. For the record my name is Larry Dix, I'm executive director of the Nebraska Association of County Officials here today to testify in support of LB495. When we had this discussion with our legislative committee, we brought this in front of a number of county treasurers and they...one of the things that they iterated is that there is a need to have something like this sort from a standard because we do get those titles from other states where there are dealers and we get them from our state where anybody can be a dealer and there are some definite advantages to have a process that is defined. And, certainly, it's up to the committee as to how far reaching you want to go with the concern that Senator Loudon had, but from our point of view it is important that we have a process. And some of the confusion, I think, that's out there is because there is virtually no law today for anybody to go look at to say how really do we do this? And so that's one of the things. The last thing I would put on the record is if the committee so chooses to go forward and wants to amend or look at, I would certainly make available one of our county treasurers to assist with any questions that you would have in the process or what is being done today. So with that, I'd be happy to answer any questions that you have. [LB495]

SENATOR FISCHER: Thank you, Mr. Dix. Are there questions? I see none. Thank you very much. Any other proponents? Any other proponents for the bill? Any opponents? Any one wishing to testify in the neutral capacity? Good afternoon. [LB495]

LOY TODD: Good afternoon. Senator Fischer, members of the committee, my name is Loy Todd, L-o-y T-o-d-d, testifying in a neutral capacity regarding this legislation. I can

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tell you that we are, of course, very supportive of it, but it is very awkward for us as a trade association to stand here and say, yes, go regulate those people. Boat dealers are not members of my association. I was more than happy to help out with some of the drafting of this legislation and will continue to do so. I think it's a terrific idea. It's very hard on an industry, as one of the most regulated industries there is, I can tell you that it's very hard for an industry to operate without some formal regulations. So with that I will conclude my testimony. [LB495]

SENATOR FISCHER: Thank you, Mr. Todd. Questions? Senator Lautenbaugh. [LB495]

SENATOR LAUTENBAUGH: Is your organization going to operate an auxiliary membership (inaudible) to the boat dealers if this goes forward? [LB495]

LOY TODD: In a heartbeat. [LB495]

SENATOR LAUTENBAUGH: I figured as much. That's very good of you. [LB495]

SENATOR FISCHER: Senator Louden. [LB495]

SENATOR LOUDEN: Thank you, Senator. Had you looked at the next bill we're going to do this afternoon, Loy? [LB495]

LOY TODD: Yes, that's...we brought that in. [LB495]

SENATOR LOUDEN: Yeah, is there some of that that would have to be amended into this? I mean, we're talking about franchises and so when we get into dealers like this, then should some of this language be in there or can we put part of that bill into this bill? [LB495]

LOY TODD: I think it would be...and we did consider that, Senator, that's a very good question. I think it would be premature to do anything like that because the industries are so different. And so...in working with Sherrie Geier with the Senator's staff and with the other people involved, we all tended to agree that we had better walk before we go toward that, because I just don't know how they operate. Most other industries are so different from the motor vehicle industry as far as the franchise laws. We are bound because of the unique character of our industry. So I think that would, would really not be appropriate at this point. [LB495]

SENATOR LOUDEN: Well then do you think that this, Senator Pankonin's bill, should have something about any franchising language or would this carry over to it, I guess was my concern? [LB495]

LOY TODD: I'd sure want to learn that from their industry. I don't know what the

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relationship between their manufacturers and their dealers is. I know RV industry is totally different than us. I know that motorcycles tend to be totally different than us. Cars and trucks are so unique that I would doubt that there is the kind of necessity for the strict oversight that we have in the motor vehicle industry. [LB495]

SENATOR LOUDEN: Okay. Thank you. [LB495]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Todd. [LB495]

LOY TODD: Thank you. [LB495]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. Senator Pankonin, would you like to close? [LB495]

SENATOR PANKONIN: Thank you, Senator Fischer. I think when we had our interim hearing this summer, people were trying to speculate on how many, so called boat dealers there was in the state and we could not come up with a number. I think the estimate was maybe 150, but it was so unclear I think that's just one of the ideas of why something like this is important. What the feel I got from the hearing today is that there is some kind of need and I saw a lot of nodding up here that we potentially need something. Is this the vehicle or is this vehicle with modifications the one? You know, take the lead of the committee and whether we need to try to push this through this year or work on it some more over the interim to try to get it right. I think Senator Louden had some good questions. We did define, Senator Louden, that this would be a boat that you could put a motor on. Cathy Brink talked about if it has a VIN number. You brought up the sailboat issue, which some sailboats can be very expensive, they might not be in the waters in the state of Nebraska, but I'm sure there are some that are expensive and maybe need to be included. I'm not sure whether a dollar amount or what does go into that. So I do think there are some questions to be answered and work to be done, but I think the concept is correct. I think you heard today from both the boat dealers and the county and people involved that there is a need for this. The sales tax issue is another one. So hopefully we can move ahead in some fashion to get something done and if the committee's desire is to do it this year, we'll work hard to try to do that. Senator Dubas had a good question about some other states and if we need to do more research we'll try to do that. So thank you for your attention to this issue. I think it's one that is valid and would also have more consumer protection as well. One last comment about comparing industry, I think this one is a little unique in that the franchise...I think most of these boat dealers will have several lines that they carry, unlike a car dealer that is really strongly aligned with a manufacturer. So there is some uniqueness to it that has to be taken into account. Thank you. [LB495]

SENATOR FISCHER: Thank you, Senator Pankonin. With that I will close the hearing on LB495, open the hearing on LB477. Good afternoon, Mr. Vaughan. (See also Exhibit

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24, Gordon Krogh) [LB495]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB477 is being introduced on behalf of the New Car and Truck Dealers Association, and is the continuation of a review of Nebraska's motor vehicle franchise laws and an update in response to industry changes. The bill is meant to add better protections in the relationship between motor vehicle manufacturers and their franchised dealers. The reason for this regulation is because of the lack of bargaining power of the dealers in relation to the manufacturers. This lack of power is evidenced by 50 states having franchise laws. As a result of the volatility in the motor vehicle industry seen by the unilateral closing of dealerships across Nebraska and the United States in 2009, a further review of the statutes regulating the licensing of motor vehicle dealers and manufacturers in Nebraska was conducted and we did have a bill last year that was advanced to the floor and passed. This bill clarifies the effective date of revisions in the law and provides for hearings in the event of attempts by the manufacturers to make unilateral changes in the franchise agreements. The bill restricts the manufacturers' ability to force unordered products on the dealers and limits the manufacturers' ability to control the dealers' property after any termination. The bill also establishes a more uniform method to determine the proper payment for warranty parts and labor. And I know Mr. Todd is just waiting to tell you how important this bill is so I will conclude my testimony. [LB477]

SENATOR FISCHER: Thank you, Mr. Vaughan. First proponent, please. Good afternoon. [LB477]

LOY TODD: (Exhibit 25) Good afternoon again. I'm Loy Todd, L-o-y T-o-d-d, I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. I appreciate the lateness of the hour and your patience and I will try to be very brief. I am compelled however, to make somewhat of a legislative history because I've made that promise to several of the manufacturers that I would make sure and clearly state the things that the bill is trying to do. Primarily I would simply say that our industry is very unique in the relationship between dealers and manufacturers in that a motor vehicle dealer is tied in so tightly with the manufacturer and the manufacturer has such control over the life of the dealer and the product. And if you have a hamburger franchise from any of the various entities and you can't get along any more, you can certainly go get hamburgers some place else. If you are a Ford dealer or a Chevy dealer or a Lincoln dealer and you can't get along, you've got to stop; and so this relationship is so unique. And these contracts, these franchise agreements are basically a take it or leave it franchise. The dealers own the building; the dealers buy the inventory; they pay for it; they finance it; they pay for the training; they pay for the employees. But the manufacturer dictates every single bit of that and in total control of the product. And so

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every state, all 50 states have these kind of franchise laws; they work very well, but there's always a feeling-out process. And I'm really grateful for the relationship we have with the motor vehicle manufacturers represented by John Lindsay in the state in that we've been working on this for some time again, and I can tell you that we've pretty much worked out all the details. I have offered up a couple pages of amendments; they're very technical in nature, just to clean up provisions. I can tell you that the manufacturers are neutral on the bill as we have worked out all the problems that are pending. So very briefly I will run through this legislation and tell you what we're doing. The first thing in the bill is there has been some issue in Nebraska as to when amendments to this law take affect because there are existing contracts and while there may be unilateral attempts by a manufacturer to change the contract, we never know whether those are really effective and we try not to litigate those things. So when the Legislature passes a new law, we want to make sure that we know when that law takes affect. And so this clearly will state in the future, as many other states do, that each year when the manufacturer or the dealer renews their license, the changes that have been made by this Legislature go into effect. And so it's very clearly stated. Also, one of the new things that has been happening in the industry is dealers have an area of responsibility. For example, a dealer may be assigned the Lincoln market area and told you must provide adequate sales and service in this area and if you fail to do that we can terminate you. Very fair arrangement. However, from time to time a manufacturer might just unilaterally say we're going to change your territory. We're going to change the community you're responsible for; we're going to cut your territory in half or we're going to double it which either way has some possible negative consequences. Usually it's worked out. This bill will clearly say that in the event that there is a disagreement about the change in the territory that one side can't do it unilaterally and they can appeal to the licensing board if there is a dispute over that. Uniquely in our industry, some of the manufacturers have started sending my dealers parts and equipment that they don't order and charging it to their account because virtually every manufacturer has direct access to my dealer's bank accounts and they can simply ship parts, ship items, charge their account and say, too bad. This bill would say that after a year if we haven't sold those parts, we can return them for a full refund. Again, something we think is very fair. Also, a real trend right now, and it's happening with more than one manufacturer, they're coming and telling my dealers you must remodel your building or you must renovate. One of the manufacturers is really hung up on towers right now. They want all their dealers to have a tower so when you go in the front door there is a big tower. Another one wants a lounge for the customers to lounge in, I guess. And we're saying to them, you know, that's all well and good if business conditions would justify that. But, truly, Holdrege, Nebraska, is different than Omaha and different than Lincoln and asking a dealer who could maybe sell 12 new cars or 15 new cars a year versus 500 to build a tower and to make a lounge in a showroom that probably holds two cars is somewhat inappropriate we believe. And so we have a provision in here that says that business conditions must reasonably justify those kinds of changes if they're going to insist on them. Again, with relief to the licensing board if that becomes an issue. Another thing

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that's been happening and this is odd to us. It's always evolving, but site control and that is some manufacturers have come in unilaterally, either through a contract or through an addendum to a contract and said, even if we terminate you, we want to control the site that you own and you can't sell it to another dealer after that. We actually had that situation one time in Nebraska in the last few years where the manufacturer came in and terminated the dealer, kicked them out, whether justified or not, it was a successful termination, and then also said, and you can't sell your property to a competing dealer. We want to designate who you sell your property to. This limits their ability to do that unless they've agreed to that in writing. So the dealer would have to agree to a separate agreement in writing with the manufacturer for some reasonable compensation in order to accomplish that. There also is a provision in here that it would be a violation of the act for the manufacturer to refuse to tell the dealer their method of allocation of product. One of the real problems in the industry is a manufacturer could have somebody they really like and somebody they don't. And so the dealer they like or want to continue with gets all the good product; the dealer they're unhappy with or punishing might get all the really bad product. This says you at least have to let them know, because in rating systems the manufacturers have, they compare dealers to each other. And surprisingly enough, sometimes they'll say you're not in the upper 50 percent, but they won't tell them who they're being compared to. And they won't tell them which products that they're supplying to the other dealer. So this provision corrects that and says the dealer who is being compared to someone else has the right to find out what kind of product is being distributed and what formulas or what allocation method is being used. Also there is a minor part in here. Last year when we made the last fix of this bill, we restricted the ability of the manufacturer to require a dealer to sell only their after-market product, for example, a service contract. Some manufacturer were saying to a dealer, look, you have to sell our service contracts. You can't sell competing products. And it's simply not appropriate and so we expanded on that a little bit and just expanded it beyond service contracts and said other products. And this is one that I have to mention because I was contacted by American Honda regarding this. There is a provision in this bill that says the manufacturer may not prohibit a dealer from acquiring a franchise in a contiguous area. And that is, Honda had an absolute rule that said if you, for example, the Omaha Honda dealer and the Lincoln area came open and if they were contiguous, Honda had an absolute rule that said that that Omaha dealer cannot have that Lincoln, Nebraska, territory. Well, we said, you know, we can understand you wanting somebody else, but you shouldn't be able to have a rule, just an absolute rule, that that's a disqualifier. And so that's in there. And what we agreed with them is to tell you that and to put it on the record that that certainly can be a consideration because competition is good and there may be very wise reasons not to select that dealer for an open territory. But it should not be automatic you're disqualified because you're next door. Might be the best choice in the world and we'd hate to have a rule that would interfere with that. Another provision in here, copied from several other states, I will mention this, there is nothing in this bill and there is nothing in Nebraska law that is unique to Nebraska. Every single thing in here is being lived with by the

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manufacturers in many, many other states, if not in every other state. And the one provision we find on page 18, manufacturers have learned a new trick. And what they were doing is, our law clearly says that my dealer is responsibly for your warranty. If you buy a Buick from a Buick dealer, my dealer is responsible for performing the warranty work on that vehicle. And the manufacturer is required by law to pay for that warranty work in accordance with the warranty under current practices. What we found were some manufacturers were putting other parts in the vehicle. I'm just going to make up, let's say you're a Yugo manufacturer and I've got a Yugo dealer and they were putting in a Motorola radio in that Yugo and then sending it out, it breaks, and you go in as a customer and say I want it fixed, my dealer fixes it, or says we need to fix it, and Yugo say, you know what, that's a Motorola radio, we'll just...talk to Motorola and make them send out a new radio. And they're not bound by our law to pay for it or anything else. So we did as Ohio has done and many other states, we're saying if its your car and you've got component parts in it, you're responsible for paying for the warranty repairs. One of the last items in this legislation is a clarification of the requirement for a manufacturer to pay for warranty repair and how to do that. Nebraska law, for longer than I have been around, has required the manufacturer to pay the dealer retail rates for warranty repairs. If we fail to do that, what would happen is because manufacturers would set up a discounted system of payment which they really sort of do anyhow, and that passes on those expenses to retail customers, because if they're not paying their full share of what it costs to run a dealership and the maintenance and everything else, then that gets passed onto the public. And so...but the one weakness in our law, and many other laws, was some way to prove it. Some way to prove what our retail rate was. And this bill goes into a fairly extensive method that's been copied from many, many other states now where you submit a hundred consecutive repair orders to the manufacturer and say, here's what we're charging our customers, that's what our labor rate is in Gothenburg or Lincoln or in Omaha. We're not saying they all have to pay the same, we're saying it's localized, but we're asking the manufacturer to pay the same rate as we do our other customers for nonwarranty work. It's all been...it's agreed to, it's how it's working in other states and working very well. And we appreciate their cooperation on that. One other thing, there is a...in the amendments, and this is again a Honda issue, we want to make sure it's clear; under our law, we're going to a one-year audit period. That is, a manufacturer, if we do a repair on your car, we have one year where they can come in and audit and decide whether or not they want to be repayed what they paid on the warranty. So manufacturers are supposed to pay within 30 days; they have a year to audit that, come back and charge back if they think something was wrong. There is also a 4-year opportunity for them to come back if they think it's fraud. And I want to very clearly say that during...the manufacturer has a right to charge the dealer back for any improperly paid claim in four years for any claim that's disputed based upon fraud, but we're asking and other states have got this provision. But they have to resolve the dispute before they can charge the dealer's account. Because that is what they were doing. They were simply saying, well, we decided that you were \$5,000 off, and boom, that money is out of your account and that's just not right. If we're going to have a

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dispute, let's have a dispute, let's work through the appeals process and then if they're...if they still think so, they can charge it back. But with that, that's our bill. I can tell you that it was a lot of work to get there and lots of other states fight over this stuff and I truly appreciate the fact that manufacturers have been so willing to sit down with us and work these things out. With that if there are any questions. [LB477]

SENATOR FISCHER: Thank you, Mr. Todd. Senator Hadley. [LB477]

SENATOR HADLEY: Senator Fischer, Mr. Todd, just a question. In the last bill, I think the comment was made to the extent that when we do warranty work it's done at a lesser...we get paid less than what we do if we do retail work. Did I hear you correctly that effectively what you're saying is that they should be pretty close in automobile dealers? [LB477]

LOY TODD: Yeah, we're certainly hoping this works. Our problem historically has been finding a methodology that worked, because we don't want to litigate. I mean the last thing you want to do is sue your manufacturer. Our law has always said the manufacturer is required to pay retail for parts and warranty work, for parts and labor. The difficulty was proving to them what that was. And so they would set up their own rate schedule, their own system, and we had to try to figure out a way to work through it. And then industries nationwide has evolved into this hundred consecutive repair orders. Now you have something concrete because if you come in with your car and my dealer fixes it and charges you \$28 an hour labor and a 30 percent markup on parts, we can demonstrate that to the manufacturer now and say, okay, here's what our parts and labor rate is, we charge \$28 an hour and here is proof and we mark up the parts 30 percent and here's the proof. And we do a hundred of those consecutively and now we don't have to have a lifetime disagreement over this thing. [LB477]

SENATOR HADLEY: Then one other quick question. I've not run across the term franchise community. Is that basically the...is that synonymous with territory? [LB477]

LOY TODD: Yes, or in the industry. In Nebraska we call it community and I think we copy that from other states. But what we're referring to is the area of responsibility. That is, basically, a protected area where you are responsible as a dealer to provide sales and service within that area and it is defined as community. Under our law, what it means is whatever they agreed to. If Chevrolet said your community is from Valentine to Scottsbluff and then to the Wyoming border, that's the community. If they say it's Lincoln, Nebraska, east of 48th Street to the Lancaster County line, that's the community. So it's just a word we use to define area of responsibility. [LB477]

SENATOR HADLEY: So, and does that mean that basically the manufacturer is prohibited from putting another dealer in that community? [LB477]

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LOY TODD: The manufacturer is not prohibited from doing it; the manufacturer though must show good cause in order to do it. They can do it by agreement, but the dealer has a right to object and say, I'm already doing a great job. And then there's a hearing before the licensing board. Sometimes the licensing board allows it, sometimes they don't. But it's for the public's convenience and advantage. It's not based upon protection of the dealer, it's based upon are they serving the public. And so that's the standard that is followed. [LB477]

SENATOR HADLEY: Okay. Thank you, Mr. Todd. [LB477]

SENATOR FISCHER: Other questions? Senator Dubas. [LB477]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Todd. This is all very, very new to me and as I was reading through this bill I couldn't quite understand what are we trying to do here. So you really helped clear that up for me. And I think you also said that you actually worked with the manufacturers on the language on this bill,... [LB477]

LOY TODD: Yes. [LB477]

SENATOR DUBAS: ...because my concern was, as I was listening to you talk, it appears that they can be somewhat vindictive, maybe, in the way they operate. Maybe that's a little too strong of a word, but my concern was, will by enacting this, will it give them more opportunity to maybe be a little harsher with our dealers? [LB477]

LOY TODD: There's always give and take. I can tell you, the difficulty isn't that they're evil, the difficult is that they're so big, and they're just huge. And none of my dealers are big enough to make a difference to them. If they lost the biggest dealer in Nebraska, it wouldn't even be a blip on their radar screen. And so the bargaining power is so disparate. But that's why we have these laws. And like I said, uniquely we've been able to work with them. I'm not asking for anything here that they can't live with and haven't indicated they can live with and they're not going to come after us. So I do appreciate your question and it is such a different world. I'm not surprised that it is a little vague. [LB477]

SENATOR DUBAS: Thank you. [LB477]

SENATOR FISCHER: Other questions? Senator Campbell. [LB477]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Todd, I was following along on the bill summary as you were talking and one section I don't think you covered was prohibits a manufacturer from requiring a dealer to give the manufacturer a customer's information. [LB477]

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LOY TODD: Oh, thank you, Senator. That's really critical. There are several new federal laws coming down right now regarding privacy and we have always in Nebraska protected a customer's privacy. There is a provision under current law that says a manufacturer may not require the dealer to give personal or nonpublic information to a manufacturer if the customer objects. Under new federal privacy laws, and amendments to them, there's also a very complicated process where we have to give you as a customer the...we have to give you a privacy notice that says one of two things. The one is, we don't share your nonpublic information with anybody except under a few limited federal exceptions. We have to give you that notice and we are...we can be fined heavily and...if we violate that. The alternative to that is to say to the customer, we do share your private information unless you don't want us to and you can opt out of that. Now 99 percent of my dealers wouldn't even consider telling you we share your information. Unfortunately, manufacturers have been recently saying to us, you've got to share your information; you've got to tell the customer that we want the nonpublic information. So then we can turn around and try to sell them something by mail or telemarketing or whatever other kind of way they can do that. This provision steps up and says, look, you can't make us give a customer an opt out; we're just going to keep it private. Now if the parties want to agree to that, they can. But this restricts the manufacturer's ability to unilaterally say to the dealer, you must, you must try to get that customer to let us have their private information and we...because we...we want to work with our customers. And we feel it is our relationship, not theirs. So, I appreciate the question. [LB477]

SENATOR CAMPBELL: Thank you. [LB477]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Todd. [LB477]

LOY TODD: Thank you. [LB477]

SENATOR FISCHER: Other proponents for the bill? Any other proponents? Any opponents? Anyone in the neutral capacity? I see none. We will waive closing. With that I will close the hearing on LB477 and close the hearings for the day. [LB477]